

The Committee Appointed by  
The All Parties' Conference  
1928

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The Nehru Report  
*An Anti-Separatist Manifesto*



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To

DR. M. A. ANSARI

PRESIDENT, ALL PARTIES CONFERENCE

DEAR MR. PRESIDENT,

I have the honour to present to you the report of the Committee appointed by the All Parties Conference in Bombay on May 19th, 1928 to consider and determine the principles of the Constitution for India. I regret the delay in presenting this report. You have already been informed of the reasons for this delay and you were good enough to extend the presentation of this report.

Yours Sincerely

MOTILAL NEHRU

*Chairman*

ALLAHABAD

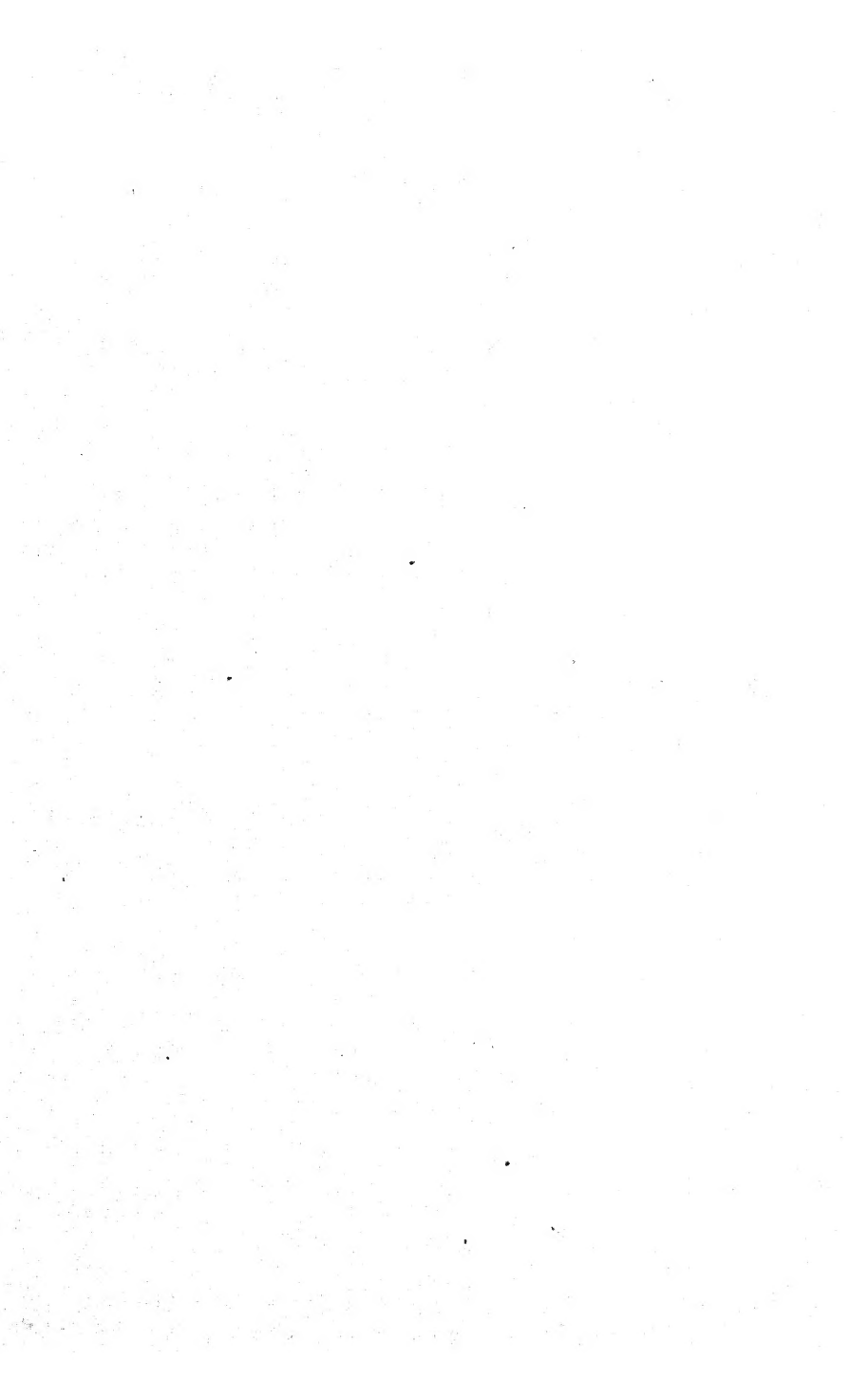
*August 10th, 1928*





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## INTRODUCTORY.

In submitting this report to the All Parties Conference which appointed this Committee, we consider it necessary at the very outset to draw attention to the fact that our instructions were to frame a constitution providing for the establishment of full responsible government. The reasons which have led us to interpret these instructions as a direction to follow the model of self-governing dominions are explained in Chapter I. It will be observed that in the body of the report we have made no distinction between "responsible government" and the "dominion form of government" and have throughout presumed that they mean one and the same thing. Our terms of reference do not call upon us to make out a case for responsible government for the obvious reason that so far as the conference was concerned there was no necessity for doing so. There certainly are those among the parties represented in the Conference who put their case on the higher plane of complete independence but we are not aware of any who would be satisfied with anything lower than full dominion status. On the assumption that India is to have the status of a member of the British Commonwealth of Nations there is scarcely any difference of opinion between one section or another of political India.] It may be safely premised that the greatest common factor of agreement among the well recognised political parties in India is that the status and position of India should in no case be lower than that of the self-governing dominions such as Canada, Australia, South Africa or the Irish Free State. In one word the attainment of dominion status is not viewed as a remote stage of our evolution but as the next immediate step. That being so it would in ordinary circumstances be unnecessary for us to justify the basis of our recommendations.

But certain false issues have recently been raised in official circles with a view to defeat or delay the establishment of any form of responsible government in India. It is quite

likely that the arguments of these critics will be repeated in different forms from different quarters. We have therefore considered it desirable to dispel the clouds that have gathered round the main issue in this introduction to our report. These arguments may be summarised as follows :—

1. That responsible government does not necessarily mean dominion status and may fall short of it.

2. That Parliament does not stand pledged to dominion status.

3. That the problem of minorities and the absence of the necessary social conditions are obstacles in the working of a system of full responsible government.

4. That we are incapable of defending ourselves.

5. That the problem of Indian States has not been solved.

6. That there is a feeling of uneasiness prevailing in European commercial circles and the services.

‘Dominion status’ is a well understood phrase in constitutional law and though the task of defining it with precision may be difficult, yet every one acquainted with the history and growth of the political institutions prevailing in the dominions, understands what is meant by it. At the Imperial Conference of 1926 the position of the group of self-governing communities composed of Great Britain and the dominions was defined as follows : ‘They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth of Nations’ (Keith, Responsible Government, Volume II, page 1224). The learned author from whom we have quoted says that ‘the definition may be admired for its intention rather than for its accuracy as a description of fact as opposed to ideal’. We are content to look to its intention, and we feel that such difficulties as may arise in the actual working of a constitution, the basis of which is dominion status, in relation to the other members of the British Commonwealth of Nations may well be left to be solved in the case of the ‘Dominion of

India' as in that of any other 'dominion', by those wholesome moral and political influences which regulate and must regulate the relations of a composite commonwealth of nations.

The common characteristic of the constitutions of all the dominions is that they all have the responsible form of government everywhere, in other words a form of government in which the executive is responsible to the popularly elected legislature. That is how the 'autonomy' and the political power of each dominion has found expression, and we are not aware of the phrase 'responsible government' having received any other interpretation anywhere, nor, excepting where the form of government is professedly autocratic, do we find that the legislature has been assigned a position of subordination, or that fetters or restrictions have been imposed upon its powers.

Our critics, however, urge that the pronouncement of August, 1917 spoke of 'gradual development of self-governing institutions with a view to the progressive realisation of responsible government in India,' and that, that is the phrase used in the preamble to the Government of India Act. Now in the first place it is scarcely necessary to point out that those of us who are members of the Indian National Congress never acquiesced in the said phraseology, and in the second those of us who accepted the preamble cannot believe that in 1917-1919 Parliament or British statesmen deliberately spoke with mental reservation, and chose language which might be used to repel the claim of India to dominion status. In his speech delivered in the Legislative Assembly on February 8, 1924, Sir Malcolm Hailey the then home member of the government, observed, 'If you analyse the term 'full dominion self-government' you will see that it is of somewhat wider extent, conveying that not only will the executive be responsible to the legislature, but the legislature will in itself have the full powers which are typical of the modern dominion. I say there is some difference of substance because responsible government is not necessarily incompatible with a legislature with limited or restricted powers. It may be that full dominion self-government is the logical outcome of responsible

government; nay it may be the inevitable and historical development of responsible government, but it is a further and a final step'. This speech may be taken to be the beginning of a new current of thought in official circles in India and we find that it has ever since been re-echoed in the speeches of some British statesmen and the writings of publicists in the British press, or the books that have been brought out by retired English members of the bureaucracy in India. Sir Malcolm Hailey's arguments and the implications of his arguments were at once repudiated by the members of the Legislative Assembly and by Indian public opinion outside the Assembly.

Now we desire to point out that the distinction drawn between 'dominion status' and 'responsible government' is a distinction which was never sought to be made in 1917, or 1919, nor was India invited to accept the declaration of August 20, 1917, in the sense that what his majesty's government intended to promise to India was something less than the dominion status, viz., a responsible government comprising a 'legislature with limited or restricted powers'. To hold that this is what British statesmen really meant would be to attribute to them a deliberate equivocation which if true, must tend to shatter the faith of even those Indian political parties in the plighted word of British Parliament, which have hitherto acted upon the assumption that dominion status was India's allotted goal. Sir Malcolm Hailey knew well enough that in the instrument of instructions, issued by the King to the Governor-General, 'reference is made' "to the end that British India may attain its due place among our dominions" and he referred to it assuming, but not proving, that it would reinforce his argument. We think that the quotation we have made from the instrument of instructions so far from supporting the view he was urging, supports our view that neither Parliament nor any British statesmen made the subtle distinction between 'responsible government' and 'dominion status' in 1917 or 1919 which it was left to Sir Malcolm Hailey to make in 1924. It is entirely out of question that India can agree to have responsible government in the sense in which Sir Malcolm

Hailey used that expression, that is to say, a system of government in which the powers of the legislature are limited or restricted.

We should have thought that statesmanship required that the promise of responsible government would be interpreted in a broad minded spirit and that there would be no room for an interpretation which, if true, cannot but react on the honour of those who made it, and is bound to be repudiated in India. If the atmosphere in which the declaration was made by Parliament, and the demand in response to which it was made, are borne in mind, if, further, it is borne in mind that India was just like the dominions a signatory to the peace treaties, and is and has been an original member of the League of Nations, there should be no room for doubt that England is pledged to India that her place in the British Commonwealth of Nations is to be exactly the same as that of any other self-governing 'dominion'. The claim of India cannot in our opinion be disposed of by such distinctions as were made in 1924 by the home member of the Government of India. If Sir Malcolm Hailey is right in saying that in a system of responsible government, the legislature may be one with limited or restricted powers, then full dominion self-government cannot for obvious reasons be the logical outcome of responsible government, it can only come as 'a further and a final step' when restrictions or limitations placed on the power of the legislature have been removed. This is merely trifling with India and perpetuating that sense of struggle which, until it is over, must on the one hand be an ever widening source of friction between England and India, and on the other prevent the application of our energies to the practical task of self-government and social and economic reconstruction. As against Sir Malcolm Hailey's interpretation, we refer to the royal proclamation of December 23, 1919, in which his majesty spoke of the Act of 1919 as pointing the way to "*full responsible government hereafter*" and "*the right of her (India's) people to direct her affairs and safeguard her interests*". Professor Keith speaking of the elections to Indian legislative bodies at the end of 1920 said "they...herald the time when India will possess full autonomy and will rank as an

equal with the dominions and the United Kingdom itself as a member of the British Commonwealth". Our interpretation is no other than this, and we cannot acquiesce in an interpretation, put by a member of the Government of India which virtually negatives the solemn declaration of Parliament.

We have therefore made our recommendations on the basis (1) that we are agreed that nothing short of dominion status will satisfy India and (2) that the form of government to be established in India will be the same and not lower than that of the other self-governing dominions.

We are aware of the various objections that have been taken to the suitability of that form of Government to India. For instance it has been said that the ballot-box is not suited to the genius

Objections to dominion status

Ballot-box

of India and that India may have self-government without necessarily having responsible government. Indeed our critics go to the length of maintaining that parliamentary institutions have failed in Europe in practically every country other than England. It is somewhat remarkable that notwithstanding this sort of criticism, every country in Europe, which has turned its back on autocracy, has adopted some form or other of parliamentary institutions. Italy or Russia, which represent extreme types of political experiment, can scarcely be held out to us by our critics as examples to follow. Not only is this true of Europe, but even oriental nations like Japan, Turkey and Persia have adopted constitutions of a parliamentary character. But assuming that the ballot-box is not suited to the genius of India, we ask, 'what is the alternative?' Some fanciful theories have

Fanciful theories

been suggested. It has, for instance, been said that India may be parcelled out into compact states upon the model of the indigenous system prevailing in the Indian States. 'The ardent builders of the new Jerusalem', says Sir Walter Lawrence, 'must come down to some safe and sound foundation. Surely it would be better to adopt and improve the indigenous institution of Indian States, than to travesty and emasculate a system which is only tolerable in the vigorous hands of British officials, detached, im-



partial, and, to the Indians, inscrutable as the Sphinx' ("The India That We Served", page 289). What exactly can be the meaning of this sort of confused suggestion, it is difficult to understand. Surely, it is not intended to suggest that the provinces of India, or parts of those provinces, should be handed over to Indian Princes or that a new order of princes is to be created from among the favoured classes in British India. That will be, not evolving a constitution for India, in accordance with the wishes of the people of India and the plighted word of Parliament, but writing an epitaph on British rule in India from which the future historian will draw his own moral. A yet more grotesque suggestion was made a few months ago in a reputed organ of Tory opinion in England that the government should rescue from oblivion some surviving descendant of the great Moghal and install him as King at Delhi. We can scarcely believe this to be serious politics.

Again, the idea of Indo-British partnership has been seriously mooted in England by some retired governors who believe that the entire problem of India will be solved if Indians can agree to a perpetual maintenance of a certain number—not less than fifty per cent., it may well be more—of British officials to man the services of India. We have reasons to believe that in some high quarters the belief is seriously maintained that all that need be done at present is (1) to establish a modified form of government which shall consist of ministers appointed from among the elected members of the legislature and officials appointed by the crown and owning responsibility not to the legislature but to the crown, (2) to establish second chambers in the provinces so as to stimulate the conservative element and thus to provide an equipoise against the hasty, ill-conceived activities of an irresponsible lower house, (3) to leave the structure and composition of the central government absolutely untouched and (4) if possible to make the Legislative Assembly less harmful than it is supposed to be by restricting the legislative activities of the All India politicians who are imagined to be less 'representative' than their more compromising brethren in the provincial councils. Now, all that may pass with a certain class

Indo-British Partnership

of people, both in England and in India, as a constitutional advance. In our opinion it will be very far removed from the problem of responsible government or dominion status.

The fact is that whatever difficulties may be said to exist in the way of establishing full responsible government in India, that is to say, in giving India the status of a dominion, there is no half-way house between the present hybrid system and genuine responsible government. As we visualise the problem, it is not to our mind, so much a question of the colour of the administrative and governmental machinery, as of the basic principle on which the future government shall be based. If all the members of the Governor-General's executive council were Indians and if all the members of the bureaucracy in the provinces were Indians, it would only mean the substitution of a brown for a white bureaucracy. We use these expressions in no offensive sense. The real problem, to our mind, consists in the transference of political power and responsibility *from the people of England to the people of India.*

How do the people of England discharge their responsibility towards India at present? The average British voter knows little of India and has no time for India. He sends a certain number of representatives to Parliament, who are divided into parties or groups. Most of them are supremely ignorant about India, and they have an abiding faith that the Secretary of State for

Secretary of State for  
India

India, on whom they have by statute conferred certain powers, is there to look after the interests of India. The Secretary of State in his turn is generally a politician who has no first hand knowledge of India and who must perforce derive his knowledge of Indian affairs either from the Government of India, or from the members of his permanent staff, or from the members of the India Council. In other words, in actual practice, the sovereignty of Parliament is translated into the rule of the India Office. The first need, therefore, of India is the abolition of the rule of this coterie, which in recent years has been found, in several respects, to be disastrous to the best interests of India and opposed to the freedom

of the Government of India itself. The freedom of the Government of India, however, from the leading strings of the Secretary of State necessarily postulates the transfer of the political power from the British voter to the Indian voter. Never before in the history of India has India been ruled by a distant sovereign body which cannot exercise its powers directly, and which must, therefore, delegate its authority and power to its agents. Unnatural as the system would be in the case of any country, it cannot be endured indefinitely in a country like India, with its varied problems, social and economic, and more particularly when a new consciousness of its capacity, a new self-respect, and a new spirit of patriotism have given her a new motive power. Constitutionally, and as a matter of principle, therefore, we think, that nothing short of full responsible government based on a transference of political power to the people of India can meet the situation.

The practical objections to our demand for dominion self-government, were formulated, by  
**Indian States** Sir Malcolm Hailey, in the form of certain questions in the speech to which we have already referred. They may be taken as typical of the criticism that is usually made by our critics. 'Is dominion self-government' asks Sir Malcolm Hailey, 'to be confined to British India only, or is it to be extended to the Indian States?' We have attempted to answer this question in a separate chapter to which we invite attention.

The second question which was put by Sir Malcolm Hailey, and which is usually put by  
**Minority Communities** our critics is as to the position of minority communities. Like Sir Malcolm Hailey, we do not desire to "exaggerate it", and like him we feel that "it has to be faced". We have attempted to face this problem in our report. We have provided for the protection of the rights of the minorities, not only in the declaration of rights, which in the peculiar circumstances of India we consider to be necessary, but we have dealt with the question at length in relation to the problem of the representation of the minorities in the legislatures. We would, however, point out that the problem of minorities is not peculiar to India. The existence of that problem in other countries has had to be

faced in the framing of their constitutions after the war, but has never been treated as an argument or reason for withholding from them self-government in the fullest measure.) We would earnestly recommend to the Conference that if, in addition to, or in substitution for, our recommendations, the settlement of the problem of minorities is possible by agreement on any other basis, such basis should be accepted in the larger and more abiding interests of the country.

Another question, which was put by Sir Malcolm Hailey, and which is also usually put by others, is, whether we have satisfied ourselves that "there exist those social and political foundations on which alone such constitutional structure can safely exist". Sir Malcolm has in a way answered this question himself in his speech. "Now I do not wish," said he, "to exaggerate this point. I do not claim that a country must wait for constitutional advance until it has a huge preponderance of educated voters. We did not wait for this in England. Again, I do not wish to deny that the intelligentsia of this country has a great—perhaps a preponderating—influence over the mass of public opinion, certainly an influence out of proportion to its numerical strength. But I do claim that for the moment political advance in India has already outrun social advance". We would like to point out that a national government based on democratic lines could not have more grievously neglected the claims of social advance than has the bureaucratic government, partly because of its foreign character, partly because of its natural reluctance to court unpopularity, and partly because a socially strong India would also be a much stronger political India. We do not deny that there is much need for social advance. Indeed, the need seems to us to be urgent and imperative. We feel, however, that that is an argument for, rather than against, the establishment of responsible government; for we believe that without real political power coming into our hands, a real programme of social reconstruction is out of the question. At the same time we desire to point out that there are a number of agencies in the country, manned, supported and financed by the intelligentsia of this country, which have been for years past, working in

the field of social reform, with appreciable results which are ignored by our foreign critics, who rather lay stress upon the darker side of our life than upon the brighter. We can not believe that a future responsible government can ignore the claims of mass education, or the uplift of the submerged classes, or the social or economic reconstruction of village life in India. At any rate, the record of even the present councils with their limited financial resources and limited power, shows that primary education has in several provinces received far greater attention and support from the members of the council than it used to in what are called the pre-reform days.

We are next confronted with questions relating to European commerce, and are told that "men who have put great sums of money in India and are daily increasing the sphere of their operation, have a right to know if we contemplate an early change of government". Similarly, we are told that "men entering the services, whether civil or military, whether European or Indian, have a right to know if we intend a radical change of government at an early date". As regards European commerce we cannot see why men who have put great sums of money into India should at all be nervous. It is inconceivable that there can be any discriminating legislation against any community doing business lawfully in India. European commerce like Indian commerce, has had to bear in the past, and will have to bear in the future the vicissitude inseparable from commercial undertakings on a large scale, and no government in the west or anywhere else has been able effectively to provide a permanent and stable solution for conflicts between capital and labour. If, however, there are any special interests of European commerce which require special treatment in future, it is only fair that in regard to the protection of those interests, Europeans should formulate their proposals and we have no doubt that they will receive proper consideration from those who are anxious for a peaceful solution of the political problem. As regards the services, we would draw attention to the provisions that we have suggested in our report. In respect of the emoluments, allowances and pensions

European Commerce  
and Services

they would be entitled to on the establishment of the Commonwealth we have provided a statutory guarantee. It is however our duty to point out that the Lee Commission was appointed in the teeth of Indian opposition ; that its recommendations were adopted over the head of the Indian legislature ; and we feel that the entire question of the source and method of recruitment of the services, their salaries, emoluments, allowances and pensions in the future, will require re-examination in the light of the new political conditions created under the new constitution. This however, cannot mean, that the permanent services, whether European or Indian, will under a responsible government, occupy a less important or influential or safe position than they do in the self-governing dominions.

The last question to which we would refer is the question of defence. "Full dominion status", said Sir Malcolm Hailey, "means a dominion army under full control of the dominion government, and I have not yet seen any serious thinker who has pretended that India is yet in a position or will, in the immediate future, be in a position to create a dominion army in the proper sense of the word". Professor Keith, writing on the subject, says "that the Indian Army could be officered by the Indians, and brought up to the standard of securing internal order, and even perhaps frontier defence, may be admitted, but the process has been so far extremely slow. It is probably true, that the Indianisation of the Army has not been popular in British Army circles, but there has been a disappointing lack of readiness of the necessary candidates for the commissions available no doubt for the reason that men who desire to secure careers for their sons, find more remunerative opportunities for them in the Indian Civil Service, in which, moreover, an Indian has not to face the prejudice against him which he may find in the British Army. But the fact remains, that self-government without an effective Indian Army is an impossibility and no amount of protests or demonstrations, or denunciations of the Imperial Government can avail to alter that fact".

This is true but we do not accept the constitutional position that without an Indian or dominion army India

cannot attain dominion status. In the first place, the Indian army has not to be created ; it exists there already. In the next place, historically the position taken by our critics, is not correct.

We venture to quote on this subject from the speech of Sir Sivaswamy Iyer in the Legislative Assembly, delivered on February, 18, 1924. Sir Sivaswamy Iyer is a gentleman who has made a special study of the problem of the army in India and we have no hesitation in quoting him. " But with regard to the problem of the army, I have only to observe this, that so far as my reading of colonial history goes, none of the colonies was in a position to assume its defence at the time when a self-governing status was granted to it. For many years, the colonies were not even able to pay for their defence. It was the home government that had to contribute towards the military expenditure of the colonies. We, on the other hand, have from the beginning paid for our army. We have not merely paid for our army, but we have raised our troops. We have raised and maintained our Indian troops and we have also maintained the British troops and paid for them. We have gone further than the colonies have done in the matter of undertaking our defence. No doubt, Sir Malcolm Hailey is right in saying that full dominion self-government implies the capacity to undertake the defence, not merely by paying for it but also by undertaking its officering and administration. But that was not a condition which was insisted upon in the case of any of the colonies. So far as defence against internal disturbances was concerned, that no doubt was a condition which was pointed out to the colonies as essential some years after they were granted their self-governing status. But so far as defence against external aggression was concerned, I am not aware that the duty has been laid upon them even now. As regards naval defence, the obligation has not been laid upon them."

We have recommended in our report the transfer of the control over the Indian army with the necessary guarantees for the pay, emoluments, allowances and pensions of the officers. We believe that the representation of the army in the legislature by a responsible minister,

Recommendations  
about the Army

who will, in actual administration, no doubt be guided by expert advice, is bound to lead to the establishment of more intimate relations between the army and the legislature, and thus secure a continuous supply of funds for the army. As matters stand at present, the army budget is sacrosanct. Under the statute it is not open to discussion "unless the Governor-General otherwise directs", but in any case it is not subject to the vote of the legislature. The position, at the present moment is that the eight unit scheme is the only serious attempt that has hitherto been made at Indianising the army, and even if it is accelerated it should take at least a century before the army will be really Indianised. The fate of the Skeen Committee's report which condemned the eight unit scheme is well known, and the proposal to increase the number of candidates for Sandhurst is scarcely calculated to lead to the Indianisation of the army within a reasonable distance of time. We do not agree with the view that the supply of candidates for Sandhurst could not have been larger than what it has been. We feel that the method of selection hitherto followed has left much to be desired. But we do not believe that an adequate degree of efficiency in the training of officers cannot be achieved in India if measures necessary to that end are adopted. It should be the first care of the responsible government of India to make her self-contained in military as in other matters. We have, accordingly, made provision in our report for a statutory obligation on the government to establish military training schools and colleges. As a matter of further precaution, we have provided for the establishment of a Committee of Defence, based more or less on well known models.



# THE REPORT



## CHAPTER 10

### THE COMMITTEE

The Committee, whose report we have the honour to present, was appointed by the All Parties Conference at its meeting held in Bombay on May 19th, 1928 in terms of the following resolution :—

“ This meeting resolves that a Committee consisting of Pandit Motilal Nehru as Chairman, Sir Tej Bahadur Sapru, Sir Ali Imam, Syt. Pradhan, Syt. Shuaib Qureshi; Syt Subhas Chandra Bose, Syt Madhaorao Aney, Syt. M. R. Jayakar, Syt- N. M. Joshi and Sardar Mangal Singh be appointed to consider and determine the principles of the Constitution for India before 1st July next; the Committee to circulate the draft among various organisations in the country. This Committee shall give the fullest consideration to the resolution of the Madras Congress on Communal Unity in conjunction with those passed by the Hindu Mahasabha, the Muslim League, the Sikh League and the other political organisations represented at the All Parties Conference at Delhi and the suggestions that may hereafter be received by it; the Committee will give due weight to the recommendations made by the various sub-committees of the All Parties Conference at Delhi.

The All Parties Conference will meet again early in August, 1928 to consider the Committee's report”.

Before dealing with the work of this Committee it may be desirable to refer to some of the events leading up to the appointment of the Committee.

#### Brief History

The Gauhati Session of the National Congress met in December, 1926 in the shadow of a great tragedy\* and when differences and conflicts between Hindus and Muslims were at their height. The Congress passed a resolution calling upon “the Working Committee to take immediate steps in consultation with Hindu and Mussalman leaders to devise

#### Gauhati

\* Swami Shraddhanand was murdered in his sick bed by a Muslim fanatic.

measures for the removal of the present deplorable differences between Hindus and Mussalmans and submit their report to the All India Congress Committee not later than the 31st March, 1927".

In compliance with these directions the Working Committee and the Congress President for the year held several informal conferences with Hindu and Muslim leaders and members of the central legislature.

On the 20th March, 1927 some prominent Muslim leaders met together in Delhi and put forward certain proposals on the Hindu-Muslim problem for the acceptance of the Hindus and the country. These proposals, which have come to be known as the "Muslim proposals", laid down that Musalmans were prepared to agree to joint electorates in all provinces and in the central legislature provided :

The Muslim Proposals

- (i) Sind was made into a separate province.
- (ii) The N. W. F. Province and Baluchistan were treated on the same footing as the other provinces
- (iii) In the Punjab and Bengal the proportion of representation was in accordance with the population.
- (iv) In the central legislature Muslim representation was not to be less than one third.

These proposals were communicated to the Congress and the Congress Working Committee the very next day passed a resolution appreciating the decision of the Muslim Conference to accept joint electorates and trusting that a satisfactory settlement would be arrived at on the basis of these proposals. A sub-committee was appointed to confer with Hindu and Muslim leaders.

The Congress Working Committee met again in Bombay from the 15th to the 18th May, 1927 and passed a lengthy resolution on the Hindu-Muslim question. This resolution proceeded on the basis of the Muslim proposals but was more detailed and dealt with some other matters also.

The All India Congress Committee which met in Bombay on the same dates unanimously adopted the same resolution with minor alterations. The principal change suggested on behalf of the Hindu leaders present was that Sind should not be separated on communal grounds but on general grounds applicable to all provinces. A change in the wording of the resolution removed this objection and it was passed unanimously.

This meeting of the All India Congress Committee also passed a resolution calling upon "the Working Committee to frame a Swaraj Constitution, based on a declaration of rights, for India in consultation with the elected members of the central and provincial legislatures and other leaders of political parties".

In October, 1927 the A. I. C. C. again passed a resolution on Hindu-Muslim Unity but this dealt with the religious and social aspect of the question.

The Madras Congress considered the Hindu Muslim question in its entirety and passed a lengthy resolution, dealing with both political and religious and other rights, on the general lines laid down earlier in the year by the A. I. C. C.

The Congress further passed the following resolution on the Swaraj Constitution :—

" Having regard to the general desire of all political parties in the country to unite together in settling a Swaraj Constitution, and having considered the various drafts submitted to it and the various suggestions received in reply to the Working Committee's circular, this Congress authorises the Working Committee, which shall have power to co-opt, to confer with similar Committees to be appointed by other organisations—political, labour, commercial and communal—in the country and to draft a Swaraj Constitution for India on the basis of a Declaration of Rights, and to place the same for consideration and approval before a special convention to be convened in Delhi not later than March next, consisting of the All India Congress Committee and the leaders and representatives of the other organisations above-mentioned and the elected members of the central and provincial legislatures".

Immediately after this the annual session of the Liberal Federation held in Bombay passed resolutions "cordially appreciating the earnestness of the distinguished Muslim members who have put forward the scheme for the settlement of outstanding differences between the Hindu and Muslim Communities", and suggesting that "the various items of the proposed settlement should be discussed at an early date by the duly elected representatives of the communities in a spirit of genuine co-operation as will lead to complete agreement"

A few days later the Muslim League met in Calcutta and passed a resolution authorising the Council of the League to appoint a sub-committee "to confer with the Working Committee of the Indian National Congress and such other organisations as the Council may think proper for the purpose of drafting a constitution for India in which the 'interest of the Muslim community will be safeguarded' in the manner stated in the Delhi proposals of 1927 referred to above.

In compliance with the directions contained in this resolution the Working Committee of the Congress issued invitations to a large number of organisations. Among these we might mention:

Organisations invited

- National Liberal Federation
- Hindū Maha Sabha
- All India Muslim League
- Central Khilafat Committee
- Central Sikh League
- South Indian Liberal Federation
- All India Trade Union Congress
- General Council of all Burmese Associations
- Home Rule League
- Republican League
- Independent Party in the Assembly
- Nationalist Party in the Assembly
- Indian States Subjects Association
- Indian States Subjects Conference
- Indian States Peoples' Conference
- Anglo-Indian Association
- Indian Association of Calcutta
- Parsi Central Association
- Zororstaian Association
- Parsi Rajkeya Sabha

Parsi Panchayat

All India Conference of Indian Christians

Southern India Chamber of Commerce

Dravida Mahajana Sabha and the Landholders' Associations of Oudh, Agra, Behar, Bengal and Madras.

Subsequently at Bombay invitations were also issued to the Bombay Non-Brahmin Party, the Nationalist Non-Brahmin Party, the Communist Party of Bombay and the Bombay Workers' and Peasants' Party.

Many of these organisations sent representatives to the Conference which held its first meeting on February 12th 1928 at Delhi. The Conference continued its meetings from day to day till the 22nd February.

All Parties Conference-Delhi

The first question discussed by the Conference was the objective to be aimed at in the Constitution. It was proposed that the Constitution should aim at establishing what is called a dominion form of government in India. Objection was taken by some members to this on the ground that the Congress had decided in favour of independence as the goal and no lesser goal should be aimed at. It was evident however that all the parties represented in the Conference were not prepared to go so far. Thereupon it was suggested that a formula might be agreed to which would include both the view points. "Dominion Status" has come to mean something indistinguishable from independence, except for the link with the Crown. The real difference between the two is a difference in the executive. It was possible to lay down general principles governing the entire constitution without deciding at that stage the question of the executive. The proposal to adopt the formula of "full responsible government" was therefore accepted, with the clear understanding that those who believed in independence would have the fullest liberty to carry on propaganda and otherwise work for it. The first resolution of the Conference ran thus:

"The Constitution to be framed providing for the establishment of full responsible government"

The Conference also passed resolutions dealing with the re-distribution of provinces, the electorates and reservation of seats.

First Committee

On the 22nd February, 1928 the Conference appointed a

Committee with instructions to report on the following subjects: whether the constitution should be bi-cameral or uni-cameral; franchise; declaration of rights; rights of labour and peasantry and Indian States. Having appointed the Committee the Conference adjourned. The Committee presented their report within the period fixed for it and the Conference met again at Delhi on March 8th, 1928. Meanwhile the Council of the Muslim League had met and expressed its disapproval of the resolutions of the All Parties Conference. The Council further laid down that its representatives "should press the representatives of various organisations to accept the proposals embodied in the resolution of the League Sessions of 1927 Calcutta and report the final result to the Council for such action as they consider proper before proceeding with the framing of the Constitution".

This resolution of the Muslim League Council placed a difficulty before the Conference. In accordance with its provisions the report of the Committee could not be considered by the representatives of the Muslim League so long as their other proposals had not been accepted in their totality or the League Council was not consulted again for directions.

The Conference met under this handicap. There was considerable discussion on the communal issues and it was found that there was no agreement between the representatives of the Muslim League and the Hindu Maha Sabha on the separation of Sind and on reservation of seats for majorities. The Sikhs were also strongly opposed to the latter claim. Thereupon on March 11th, 1928 the Conference appointed two sub-committees. One of these was to enquire into the financial aspect of the separation of Sind, and the other was to consider the feasibility of the system of proportional representation.

The report of the committee appointed on February 22nd could not be considered owing to the decision of the Muslim League representatives not to take part in the discussion. The Conference ordered the report to be published and circulated, and stood adjourned till the 19th May, 1928.

Early in April the Hindu Maha Sabha met in Con-



ference in Jubbulpore and adopted resolutions of strong disagreement with some of the Muslim proposals.

Thus when the All Parties Conference met again on the 19th May, 1928 in Bombay the situation was not a promising one. The communal organisations had drifted further apart and each of them had hardened in its attitude and was not prepared to change or modify it. The two sub-committees appointed at Delhi on Sind and Proportional Representation had presented no report.

There being no likelihood of an agreed and satisfactory solution at that stage, it was thought that a small committee viewing the communal problem as a whole and in its relation to the constitution might succeed in finding a way out. The resolution quoted at the beginning of this report was thereupon passed.

The Committee had to be a small one if it was to work properly. It was not possible to represent all interests on it, but an endeavour was made to have spokesmen of some important view points. Sir Ali Imam and Mr. Shuaib Qureshi were to express the Muslim point of view; Mr. M. S. Aney and Mr. M. R. Jayakar, the Hindu Maha Sabha's attitude; Mr. G. R. Pradhan the non-Brahmin view; Sardar Mangal Singh represented the Sikh League; Sir Tej Bahadur Sapru the Liberal view point and Mr. N. M. Joshi the interest of labour.

Of the ten members of the Committee elected by the Conference, Mr. M. R. Jayakar expressed his inability to act on it. Mr. N. M. Joshi stated that he could only take part when the rights of labour were being considered. As a matter of fact he was unable to be present at any sitting of the Committee. Owing to ill-health Sir Ali Imam could only attend one sitting at great personal inconvenience and his presence at that sitting was most helpful. He has also been available to us for consultations from time to time. Mr. Pradhan attended the meetings of the Committee up to the 12th June.

The Committee was called upon to report before the 1st July but in spite of every effort to complete the work in time the Committee was unable to adhere to the time table laid down. From June 5th onwards the Committee met al-

Bombay-Meeting

The present Committee

Delay in report

most daily for several hours at a time. It held 25 sittings besides informal conferences.

The Committee although a small one consists of members belonging to different political schools and to different communal groups. Under the terms of its appointment it was called upon to give the fullest consideration to a number of resolutions passed by various organisations, some of them being opposed to each other. There were two formidable difficulties in the way of complete or even substantial unanimity. The first arose from the difference in the general outlook of the Congress and that of the other organisations, the former having at its last session adopted a resolution declaring independence as its goal and the latter aiming at dominion status; the second from the widely differing angles of vision from which the various communal organisations viewed their political rights.

The Committee had to face the first difficulty right at the beginning. At Delhi a phrase capable of a double interpretation—  
**Maximum agreement** “full responsible government”—was used to avoid a decision on the question of dominion status or independence. The Committee felt however that it would be difficult to draw up even the principles of the constitution unless this question was decided at least so far as the draft constitution was concerned. Some members of the Committee desired to adhere to the position taken up at Delhi but a majority was of opinion that a choice had to be made. This choice, in view of the circumstances mentioned above with so many different parties co-operating, could only be one—dominion status. On any higher ground a general agreement was not obtainable. “The majority of the Committee” were therefore “of opinion that the terms of reference to them require the Committee to consider and determine the principles of a constitution for full responsible government on the model of the constitutions of the self-governing dominions”. The principles of the Constitution which we have suggested are therefore meant for a dominion constitution but most of them of course can be applied in their entirety to a constitution of independence. Our deciding, as a Committee,

in favour of such a constitution simply means that the maximum degree of agreement was only obtainable on this basis. It does not mean that any individual Congressman, much less the Congress itself, has given up or toned down the goal of complete independence. Those who believe in this goal retain the fullest right to work for it. But the maximum agreement thus reached will, we trust, serve as a satisfactory basis for a constitution which all parties can unite to work without prejudice to the right of any party or individual to go further ahead.

As to the second difficulty, from the constitutional point of view the communal controversies are of no very great importance. But, whatever their relative importance might be, they occupy men's minds much more than matters of greater import and cast their shadow over all political work. We thus find ourselves face to face with a number of conflicting resolutions and recommendations all of which are equally entitled to our respect. But when we find that the view of the Madras Congress and the Muslim League is diametrically opposed to that of the Hindu Maha Sabha and the Sikh League, we must respectfully express our inability to accept either in its entirety. Indeed the very fact that we are called upon to determine the principles of the constitution after considering these divergent views shows that we are expected to exercise our own judgment in the matter and make such recommendations as are in our opinion most conducive to the political advancement of the country. We realise that our recommendations however sound and expedient they may be can have weight and effect only to the extent that they are acceptable to all the principal parties concerned. The only hope for an agreed constitution lies in finding the basis for a just and equitable compromise between all the parties after a full and fair consideration of all the circumstances. The Committee has spent a great deal of time and labour in the endeavour to find out such a basis, and has had the benefit of the advice of a number of prominent Hindu and Muslim leaders who, on the invitation of the chairman, attended some meetings of the Committee and rendered most valuable assistance. The result of that endeavour is presented in the following pages in the hope that it will be received by all the

parties concerned in a generous spirit and with the single view of helping each other to lift up the nation from the depths to which it has sunk by mutual distrust and dissension.

Among those who responded to the chairman's invitation were Dr. Ansari, Pandit Madan Mohan Malaviya, Maulana Abul Kalam Azad, Mr. C. Y. Chintamani, Moulvi Shafee Daudi, Dr. S. D. Kitchlew, Mr. Sachchidanand Sinha, Munshi Iswar Saran, Dr. S. Mahmud, Chaudhri Khaliquz Zaman, and Mr. T. A. K. Sherwani. We are beholden to them for their valued help and co-operation. We feel specially grateful to the president of the Congress, Dr. Ansari, who came to us three times and was ever generous with his help whenever we were in difficulties. Our thanks are particularly due to Pandit Jawaharlal Nehru, the general secretary of the Congress, who, but for a brief unavoidable absence, was in constant attendance at the meetings of the Committee. Besides undertaking the arduous task of compiling the figures printed in the appendixes to this report he rendered most valuable assistance at every stage of the Committee's work.

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## CHAPTER II

### THE COMMUNAL ASPECT

The communal problem of India is primarily the Hindu-Muslim problem. Other communities have however latterly taken up an aggressive attitude and have demanded special rights and privileges. The Sikhs in the Punjab are an important and well knit minority which cannot be ignored. Amongst the Hindus themselves there is occasional friction, specially in the south, between non-Brahmans and Brahmans. But essentially the problem is how to adjust the differences between the Hindus and Muslims.

These two communities indeed form 90 per cent. of the total population of India and Burma. The proportions at the 1921 census were :—

Hindus .. .. .	65.9 per cent.
Muslims .. .. .	24.1 "
Buddhists (chiefly in Burma) ..	4.6 "
Tribal religions (in hill tracts) ..	2.8 "
Christians .. .. .	1.2 "
Sikhs .. .. .	1.0 "
Jains .. .. .	.2 "
Others .. .. .	.2 "
	<hr/>
	100.0 "

A study of the figures of previous census-reports shows that whilst Hindus and Jains have been gradually decreasing, all the others have increased their numbers from census to census. The increase in the case of Muslims has not been great but it has been continuous. The following percentages since 1881 will show the relative numbers of the Hindus and Muslims at different periods :

	1881	1891	1901	1911	1921
Hindus	72.0	70.1	68.3	66.9	65.9 = -6.1
Muslims	22.6	22.4	23.2	23.5	24.1 = +1.5

These are the percentages in relation to the whole of India. Taking the Muslims separately we find that they have increased by 3·1 per cent. during the last decade. The Hindus have slightly decreased during this period.

The distribution of the Muslim population is such that except in the frontier provinces in the north-west, and in Bengal and Punjab, they form a small minority everywhere. Their highest minority is in the United Provinces but even here it is less than 15 per cent. This 15 per cent. in the United Provinces is not spread out all over the province, but is largely concentrated in urban areas, specially in the northern part of the province.

In the Punjab, the Muslims are 55·3 per cent. and in Bengal 54·0 per cent. In Sind they are 73·4 per cent. and in Baluchistan and the N.-W. F. provinces they are overwhelmingly strong.

A new comer to India looking at these figures and at the strength of the Muslim community, would probably imagine that it was strong enough to look after itself and required no special protection or spoon feeding. If communal protection was necessary for any group in India it was not for the two major communities—the Hindus and the Muslims. It might have been necessary for the small communities which together form 10% of the total.

But logic or sense have little to do with communal feeling, and to-day the whole problem resolves itself in the removal from the minds of each of a baseless fear of the other and of giving a feeling of security to all communities. In looking for this security each party wants to make for itself or to retain, a dominating position. We note with regret that the spirit animating some of the communal spokesmen, is not one of live and let live. The only methods of giving a feeling of security are safeguards and guarantees and the grant, as far as possible, of cultural autonomy. The clumsy and objectionable methods of separate electorates and reservation of seats do not give this security. They only keep up an armed truce.

The Muslims being in a minority in India as a whole

fear that the majority may harass them, and to meet this difficulty they have made a novel suggestion—that they should at least dominate in some parts of India. We do not here criticise their demand. It may have some justification in the present communal atmosphere but we do feel that it has little to do with the premises we started from, unless indeed the best safeguard that one can have is to occupy a position of domination oneself. The Hindus on the other hand although in a great majority all over India are in a minority in Bengal and the Punjab and in Sind, Baluchistan and the N.-W. F. province. In spite of their all India majority they are afraid of the Muslims in these provinces.

We cannot have one community domineering over another. We may not be able to prevent this entirely but the object we should aim at is not to give dominion to one over another but to prevent the harassment and exploitation of any individual or group by another. If the fullest religious liberty is given, and cultural autonomy provided for, the communal problem is in effect solved, although people may not realise it.

With this view point before us we have provided several articles in the Declaration of  
 Communal Councils Rights giving the fullest liberty of conscience and religion to each individual. We considered also a proposal to create communal councils to protect the cultural interests of each considerable community. This proposal was that any community being ten lakhs or more in number in any province shall have the right to have a council representing the members of the community for certain purposes which were mentioned. The manner of election of the members of these councils by their respective communities was to be determined by the Provincial Council. Each council was to consist of not more than 25 members. The functions of the communal council were laid down as :

- (1) Supervision of primary education, schools, orphanages, dharamshalas, sarais, widows homes, and rescue homes.
- (2) Encouragement of scripts and languages.

The communal council could recommend that grants be given to institutions or for scholarships, such grants being made either by the provincial or central government after being submitted to the vote of the House.

These were the main provisions in regards to the communal councils. The idea appealed to us as affording some kind of a substitute for other and worse forms of communalism. But some of our colleagues and several friends whom we consulted were strongly opposed to the creation of these councils, both on communal and administrative grounds. They felt that these councils would help to keep communalism alive. We have therefore rejected the proposal.

The communal problem, so far as its political aspect is concerned, resolves itself now into the question of electorates, the reservation of seats, the separation of Sind, and the form of government in the N.-W. F. Province and Baluchistan.

It is admitted by most people now that separate electorates are thoroughly bad and must be done away with. We find however that there has been a tendency amongst the Muslims to consider them as a "valued privilege", although a considerable section are prepared to give them up in consideration for some other things. Everybody knows that separate electorates are bad for the growth of a national spirit, but everybody perhaps does not realise equally well that separate electorates are still worse for a minority community. They make the majority wholly independent of the minority and its votes and usually hostile to it. Under separate electorates therefore the chances are that the minority will always, have to face a hostile majority, which can always, by sheer force of numbers, override the wishes of the minority. This effect of having separate electorates has already become obvious, although the presence of the third party confuses the issues. Separate electorates thus benefit the majority community. Extreme communalists flourish thereunder and the majority community, far from suffering, actually benefits by them. Separate electorates must therefore be discarded completely as a condition precedent to any rational system of representation. We can only have joint or mixed electorates.

We find that the Ceylon Reform Enquiry Committee, who have recently made their report, have recommended the abolition of communal electorates throughout the island.



Regarding the form of government in the N.-W. F. province and in Baluchistan, we are of opinion that the status of these areas must be made the same as that of other provinces. We cannot in justice or in logic deny the right of any part of India to participate in responsible government. The All Parties Conference has already agreed to this and we gather that no considerable group oppose this reasonable demand.

The questions that remain are the separation of Sind from the Bombay presidency and the reservation of seats in the legislatures. These are mixed questions of communal and general importance. We have reserved the question of reservation of seats to be considered both in its communal and general aspects in a subsequent chapter. The communal aspect of the question of the separation of Sind may conveniently be dealt with here and we proceed to consider it.

Sind has, by a strange succession of events, become a major problem in our politics. It is strange that those who were in favour of its separation from Bombay only a few years ago are now opposed to it, and those who were against separation then now vehemently desire it. All India is exercised about this comparatively trivial matter. This sudden and somewhat inexplicable change of opinion demonstrates how communal considerations warp and twist our better judgment. For the last eight years, since the National Congress made Sind into a separate province, no voice was raised in protest. We feel that in the conflict of communal allegations and counter allegations the only safe course is to try to ignore them and consider the problem as dispassionately as possible. But unhappily it has become a part of the sentiment of the people and sentiment cannot be ignored.

It is stated on behalf of the Hindus in Sind and elsewhere that they are strongly opposed to the creation of "communal" provinces. We agree that the Muslim demand for the separation of Sind was not put forward in the happiest way. It was based on communalism and it was tacked on irrelevantly to certain other matters with which it had no concern whatever. We can understand

the Hindu reaction to this. But the manner of putting it forward does not necessarily weaken the merits of a proposal. There is no question of creating a "communal" province. We have merely to recognise facts as they are. A long succession of events in history is responsible for the distribution of the population of India as it is to-day. Sind happens to contain a large majority of Muslims. Whether a new province is created or not Sind must remain a predominantly Muslim area. And if the wishes of this large majority are not acceded to, it would not only be doing violence to the principle of self-determination, but would necessarily result in antagonising that majority population. No Indian desiring a free India, progressing peacefully and harmoniously, can view this result with equanimity. To say from the larger view point of nationalism that no "communal" provinces should be created is, in a way, equivalent to saying from the still wider international view point that there should be no separate nations. Both these statements have a measure of truth in them. But the staunchest internationalist recognises that without the fullest national autonomy it is extraordinarily difficult to create the international state. So also without the fullest cultural autonomy, and communalism in its better aspect is culture, it will be difficult to create a harmonious nation.

We suspect that the real opposition to separation is not due to any high national considerations but to grosser economic considerations ; to the fear of the Hindus that their economic position might suffer if Muslims had the charge of affairs in a separated area. We are sure that this fear is baseless. Among all the people of India the Hindus of Sind are perhaps the most enterprising and adventurous. The traveller meets them in the four quarters of the world, carrying on prosperous businesses and enriching their people at home by their earnings abroad. No one can take away this spirit of adventure and enterprise from the Hindus of Sind and so long as they have it their future is assured. It must be remembered also that the powers of a provincial government are limited and there is the central government which has power in all important departments. If however there is still some ground for fear that is a matter for

safeguards, not of opposing a just demand.

We are therefore of opinion that even communal grounds justify the separation of Sind. If the Hindus stand to lose thereby and the Muslims stand to gain, of which we see no chance, such risk of loss by the one and the chance of gain by the other community will not, we hope and trust, be allowed by either to endanger the larger cause. We shall deal with the general aspect of the question later. We would note here that our colleague Mr. Aney does not agree with all the above views but agrees with our conclusion.

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while favouring the system, are of opinion that under present circumstances in India it will not work. We feel strongly attracted to this method and are of opinion that it offers the only rational and just way of meeting the fears and claims of various communities. There is a place in it for every minority and an automatic adjustment takes place of rival interests. We have no doubt that proportional representation will in future be the solution of our problem.

How far is it immediately practicable? Great stress is laid on its intricacy and of the general illiteracy of the electorate in India. We are told that it is impossible to work this system, desirable as it may be, so long as the electorate is not educated up to understanding its significance. We recognise this difficulty. It is considerable. And yet we feel that it is a little exaggerated. Proportional Representation requires not so much a high standard of intelligence in the voters, as expert knowledge in the returning officers and the people who count and transfer votes from one head to another. There can be no doubt that there is a sufficiency of Indians who are competent enough to do this work of counting of votes satisfactorily. As for the general electorate it is very true that a standard of intelligence is necessary for a proper choice to be made in order of merit. But a certain standard is also necessary to exercise the right of vote even in a single member constituency. It is notorious that even in highly democratic England that standard is lacking and votes are given not for high matters of policy or considerations that are really important, but for trivial matters or even sometimes most objectionable considerations which the exigencies of election times force to the front. A general election has turned in the past on the cry of hanging the ex-Kaiser or on a forged letter, and the men, who were to govern an empire and influence largely world events, have been elected for reasons which make every intelligent person despair of democracy. In India the standard of intelligence of the voter will, to begin with at least, be lower than that of the English voter. But these are reasons against democracy, not so much against Proportional Representation.

We are told that another strong argument against Pro-

portional Representation is that for the illiterate voter it would do away with the secrecy of the ballot. We think that the device of three boxes of the same colour for each candidate with different symbols painted on each box to indicate the first, second and third choice, would remove this objection. But it applies in equal measure to the illiterate voter at most of the ordinary elections to-day. In Malta, where there is a large majority of illiterate voters, Proportional Representation has been tried with success, but of course we cannot compare the little island of Malta to our enormous country with its millions.

Most of us feel that there are no insuperable difficulties in the way of giving a trial to Proportional Representation in India. There are drawbacks and risks, but no proposal which we have considered is free from objection, and some of these involve a departure from principle which may bring greater difficulties in its train. Some of our colleagues however are not satisfied that Proportional Representation can be introduced at this stage in India. We therefore refrain from recommending it.

It was suggested that the N.-W. F. Province be  
**Amalgamation of Punjab and N.-W. F. Provinces** amalgamated with the Punjab and that there should then be no reservation of seats in this province.

We have no objection to this proposal but we do not know how far this will meet the different view points of the parties concerned. If it does meet with their approval, we would gladly recommend it. There is no special principle involved in it. Its acceptance or otherwise depends entirely on whether it is approved or not. Our colleague Sardar Mangal Singh does not approve of the proposal and we understand that some other people also are of his opinion. We therefore make no recommendation in regard to it.

A similar but more far reaching proposal was made  
**Amalgamation of Punjab N.-W. F. P. Sind & Baluchistan** to us, namely, that the Punjab, the N.-W. F. province, Baluchistan and Sind should all be amalgamated together, and that there should be no reservation of seats, unless the minority desires it, in this area. We were unable to entertain this proposal. It would mean the creation of an unwieldy province sprawling all over

a longer lease of life to communalism. 'Everybody regrets the communal spirit and desires to exercise it from the body politic. But it is clear that it cannot go merely by talking about unity and indulging in pious platitudes which take us nowhere. [Communalism can only go when the attention of the people is directed to other channels, when they begin to take interest in questions which really affect their daily lives rather than in fancied fears based on an artificial division of society. We must therefore try to create this new interest in the people and we must put no barriers in the way of the development of this interest.] There can be no doubt that a majority reservation and fixation of seats is such a barrier.

- An examination of the methods by which reservation for a majority can be secured will show that it is not only a negation of representative government but is in direct conflict with the principle on which responsible government rests.

Methods of reservation

One of these methods has been applied in the Madras and parts of the Bombay presidency to secure a partial reservation for the overwhelming majorities of non-Brahmins in those presidencies. This large community which forms over 96 per cent. of the population of the Madras presidency succeeded in inducing the government, on the recommendation of the Southborough Committee, to reserve for them 28 seats out of a total of 98 to protect them from the small minority of Brahmins who did not exceed  $2\frac{1}{2}$  per cent. of the whole population. The manner in which this reservation was secured was that two purely non-Brahmin constituencies, each returning a single member, were created and, of the remaining constituencies, 25 were made plural, each returning three or more members, two of whom must be non-Brahmins in Madras City, and one must be a non-Brahmin in each of the remaining 24. The rule on the subject is thus stated:—

The Montagu-Chelmsford method

"When the counting of the votes has been completed the Returning Officer shall forthwith declare the candidate or candidates as the case may be, to whom the largest number of votes has been given, to be elected: provided that if one or more seats are reserved the Returning Officer shall first

declare to be elected the non-Brahman candidate or candidates, as the case may be, to whom the largest number of votes has been given”.

To illustrate this rule take the case of Madras City where out of six seats in a mixed electorate two are reserved for non-Brahmins. Assume that no non-Brahmin candidate has secured enough votes to be placed among the first six who have polled the largest number of votes and that the only non-Brahman candidates who have secured any votes are to be found somewhere near the bottom of the list. Under the rule just quoted two of these non-Brahmans would be at once declared to be duly elected and the 5th and 6th candidates on the list who are not non-Brahmans would have to give place to them. Thus in the case of non-Brahmans the choice of the electorate is wholly set aside even though a majority of their own community voted against them. The question is whom would these two non-Brahmans represent. It is clear that they do not represent the majority of the electorate nor possibly even a majority of non-Brahmans. They have come in by an artificial rule based on no principle whatever. Happily the fears of the non-Brahmans in Madras turned out to be unfounded and we are informed that there never was a single occasion to put the rule into practice.

It is bad enough to have 28 members of this kind in a representative house of 98 members, but when the majority of members are elected in this manner and the ministry is formed from out of them, representative government becomes a farce.

Another method of reservation of seats both for the majority and the minority has been suggested by the promoters of what is called the “Sind Pact”. This method is thus described in clause 5 of the “Pact” :—

“In order to make the system of joint electorates truly effective, there shall be one common electoral roll for each constituency and the election of Muslim and non-Muslim representatives should be held separately but on the same day, so that the whole electorate, Muslim and non-Muslim, shall have the right and opportunity to vote at both these elections separately, whereby the members so elected shall have been returned by the entire constituency and not only

by the voters of their own communities ”.

The only merit claimed for this method is that the “members so elected shall have been returned by the entire constituency and not only by the voters of their own communities ”. For this purpose it would not be necessary to hold the elections separately as in a single election also the whole electorate—Muslim and non-Muslim—would have the right and opportunity to vote. The real object of the clause seems to be to avoid competition between the Hindu and Muslim candidates and thus secure to them reservation of seats according to their numbers. Apart from the fact that such competition is essential for the exercise by the elector of his free choice, the method proposed entirely shuts out all opportunity for a Hindu elector to vote for a Muslim candidate in preference to a candidate of his own community and *vice versa*.

It is obvious that the result of two separate ballots for each group of candidates can never be the same as that of a single ballot for both and that there will always be much greater chance at separate elections for the majority community to secure the return of their mandatories from among the minority community by concentrating their votes on them.

It will thus be seen that neither of the two methods discussed above is likely to give satisfactory results. The third and the only remaining method of which we are aware is that of separate communal electorates which we have already discussed. The doing away of communal electorates is intended to promote communal unity by making each community more or less dependent on the other at the time of the elections. But reservation for a majority community in a mixed electorate will take away much of the incentive for communal unity, as the majority community as a whole would under all circumstances be assured of its full quota without the help of the other communities. There is no doubt some advantage to be gained by individual candidates of either community having to canvass the other community as against their rivals of the same community but this small advantage will probably not be availed of in times of acute communal tension.

It is absurd to insist on reservation of seats for the



majority and claim full responsible government at the same time. Responsible government is understood to mean a government in which the executive is responsible to the legislature and the legislature to the electorate. If the members of the executive with the majority behind them have all got in by reservation and not by the free choice of the electorate there is neither representation of the electorate nor any foundation for responsible government. Reservation of seats for a majority community gives to that community the statutory right to govern the country independently of the wishes of the electorate and is foreign to all conceptions of popular government. It will confine minorities within a ring-fence and leave them no scope for expansion.

We have based the foregoing observations on the principles generally applied to representative government. We are aware that those principles have in practice been found far from perfect and that serious objections have been raised in certain quarters against democratic government itself. We can hardly enter into these considerations in this Committee and must at this stage of our evolution accept the principles governing elections in most of the advanced countries of the world. We are also aware that the system of election we have recommended has sometimes failed to establish the rule of the majority, as in the case of the last British elections, which resulted in the return of an overwhelming majority of members who had only the support of a minority of electors. This we believe was mainly due to inequalities in voting strength and the wastage of votes on candidates who did not need them. The only remedy is proportional representation which for the reasons already mentioned we have refrained from recommending at present.

We have so far considered the question of reservation for majorities on principle but the strongest argument against such reservation is furnished by the facts as they are. We are indebted to Pandit Jawaharlal Nehru for the figures given in appendixes A. & B. which he has compiled with great industry from the reports of the last census relating to Bengal and the Punjab—the only two provinces in which the Muslims are in a majority. These figures

conclusively show that there is no foundation in fact for the fears entertained by the Muslims in these two provinces, and indeed no occasion for any adventitious aid to secure to them the full benefit of their natural majority. The argument is that Mussulmans will not obtain adequate representation and the slight majority they have will be more than counter-balanced by their educational and economic backwardness in these provinces. The whole force of this argument, which is based on the total population of the two provinces, disappears when we examine in detail the figures relating to the administrative divisions and the districts composing them.

It appears from an analysis of the population figures of the Punjab and Bengal that Muslims can certainly have nothing to fear from a free electorate, without any reservation of seats, in these two provinces. It will be clear from the figures given in the appendixes that in both the Punjab and Bengal the distribution of population is such that the Muslim majority in most of the geographical and administrative areas comprising these provinces is much greater than it appears when the whole province is taken as a unit. We find that there are natural areas of reservation for the different communities which ensure the representation of each community far more effectively than any artificial reservation can do.

Thus in the Punjab, we have a Muslim zone in the north and north-west of the province, where the Muslims are overwhelmingly strong and where no other community can encroach on their preserve. We find also a smaller area in the south, the Hindu zone, where the Hindus and Sikhs are equally strong. Between the two there is a third area where the Muslims are predominant, but not overwhelmingly so. This analysis leads us to the conclusion that Muslims are bound to capture over 47 per cent of the total seats in the Punjab from their special zone alone, whilst the Hindus and Sikhs will jointly capture nearly 30 per cent. The remaining 23 per cent of seats will lie in either a predominantly Muslim area or in districts where the Muslims are the strongest single community. Allowing for every contingency we can not conceive of Muslims not capturing enough seats in this area to give

them a clear majority in the provincial legislature.

We have discussed these population figures for each Punjab district in detail in our note attached. (Appendix A). We may here however refer to some of these figures.

The population of the Punjab (British territory) at the last 1921 census was as follows :

Muslims	..	11,444,321	..	55·3%
Hindus	..	6,579,260	..	31·8
Sikhs	..	2,294,207	..	11·1%
Others (mainly Christians)	..	367,236	..	1·8%
Total Punjab population		20,685,024		100%

There are 29 districts in all. We have divided these into four zones :—

- I. Fifteen districts in the overwhelmingly Muslim zone. The percentage of Muslims in one district is nearly 91; in nine districts it is between 80 and 90; in two districts it is 71 or over; and in three it is 63·3, 61·9 and 60·7. We have included the last three districts in this zone as, although the Muslim percentage is not so high as in the adjoining districts, it is very high compared to the Hindus and Sikhs combined. Thus in one (Sheikhupura) Muslims are 63·3%, Hindus 16·0% Sikhs are 15·9%; in Sialkot, Muslims are 61·9%, Hindus are 19·5% and Sikhs are 8·0%; in Lyallpur Muslims are 60·7%, Hindus are 18·1% and Sikhs are 16·4%.

It should be remembered that the non-Muslim minority in all these districts consists not of one group but of several communities Hindus, Sikhs, Christians and others.

If we give one member of the legislatures to every 1,00,000 population as we have suggested elsewhere, we find that 98 members will be returned from this Muslim zone alone. This amounts to 47·3 per cent of the total membership of the legislature.

- II. There are two districts (Lahore and Gurdaspur)

which might be called the predominantly Muslim zone. Here the Muslims are greater than Hindus and Sikhs combined—in Lahore they are 57·3% of the total—but they are not so many as in zone I. The number of members of the legislature for these two districts are 19½ or 9·4 per cent of the total membership.

III. There are three districts where no community is predominant but even here the Muslims are the strongest single community. The number of members of the legislature for these districts is 27½ that is 13·3 per cent of the total.

IV. There are nine districts which might be called the overwhelmingly Hindu-Sikh zone. The number of members for this zone is 61½ or 29·7 per cent of the total.

We thus see that Muslims are certain of 47·3 per cent seats; have a good chance of capturing the majority at least 9·4 seats; and a fair chance of some seats out of the 13·3 per cent of group III. They are thus, humanly speaking, assured of a clear majority in the legislature.

In Bengal the figures are even more illuminating.

Bengal These are discussed in full detail in the separate note attached (see Appendix B). We give here only a brief summary. The population figures are :—

Muslims	..	25,210,802	...	54·0%
Hindus	..	20,203,527	..	43·3%
Others (chiefly tribal religions and Christians)	..	1,281,207	..	2·7%
Total Bengal population (British territory)		46,695,536		100·0%

Here also we find definite zones as in the Punjab.

- I. Overwhelmingly Muslim zone. There are 13 districts with 282 members of the legislature or over 60 per cent of the total.
- II. Predominantly Muslim zone—two districts with 23 members or 5 per cent of the total.

III. Neutral or predominantly Hindu zone. Four districts with 42 members or 9 per cent of the total.

IV. Overwhelmingly Hindu zone. Nine districts with 118 members or 25 per cent of the total.

Thus in Bengal from the overwhelmingly Muslim zone alone, not taking into consideration the predominantly Muslim zone, Muslims are assured of over 60% seats in the legislature. The Hindu minority, although it is a very big minority, is highly likely to suffer in numbers in an open general election without reservation.

This has recently been demonstrated in a remarkable manner by the figures of the last District Board elections in Bengal, printed in Appendix C. The electorates for these boards are mixed Hindu and Muslim, but the electoral roll being based on a property or tax paying franchise does not maintain the population proportions of the two communities. We expect that the voting strength of the Muslims, who are economically weaker than Hindus, is much less than it would be with adult suffrage and yet we find that they made a clean sweep of the Hindu minority in three districts—Mymensingh, Chittagong and Jessore. In the first two of these not a single Hindu was elected though the Hindus are about 24 per cent of the population, and in the third only one Hindu managed to get in though the community forms 38·2 per cent of the population. As against this we find that Muslims, where they are in insignificant minorities of 3 and 4 per cent., have managed to send one to three representatives to the District Board. We have also very interesting examples of what happens when the two communities are found in about equal strength. The cases of Khulna and Dinajpur are in point. In the former the non-Muslims being 50 per cent of the population carried 11 seats as against 5 taken by Muslims who were 49·8 per cent. In the latter the Muslims being 49 per cent. of the population carried 14 seats as against 4 of the Hindus who were over 44 per cent. Actual population is not a safe guide in the absence of exact figures showing the voting strength of the two communities, but we think it can safely be inferred that the Muslims in Bengal need no

protection from all the non-Muslims put together. The case of Jessore is particularly interesting. As long as the Muslim majority did not take much interest in the local affairs of the district the Hindu minority had it all its own way. Once roused to action the Muslims not only swept the polls but for the first time in the history of their District Board gave it a Muslim chairman and a Muslim vice chairman, both members of the Bengal Council. We are informed that the last elections for the District Boards in Bengal have opened the eyes of both communities and that Muslim opinion is now veering round to mixed electorates. It is one of the tragedies of communal hostility that men shut their eyes to facts and fight against their own best interests. We commend a careful study of the figures we have given in Appendixes A, B and C to those who are flooding the country with elaborate manifestoes and memoranda in support of communal electorates for the Punjab and Bengal.

We find therefore from an analysis of the actual figures that Muslim fears in the Punjab and Bengal are largely imaginary. These fears are based on the superior economic and educational standards of the Hindus and Sikhs. We have seen that this superiority has not helped the Hindus of Bengal at the District Board elections and we are sure that the result of council elections will be even more strikingly in favour of Muslims. But there is no doubt that Muslims are backward both in education and in wealth, specially in Bengal, as compared to the other communities. There is also no doubt that the power of wealth is great in the modern state. It is so great indeed that it seldom troubles to contest seats in the legislature as it can pull the strings from behind the scenes. Reservation of seats or separate electorates or any other device of this kind can not materially reduce this power. So long as people think and act in terms of communalism, so long will they not face the real problem. And if they will not face it, they will not solve it.

We are not here called upon to advise on a new structure of society where the economic power is not concentrated in the hands of a few. We take it that the

communal organisations which aggressively demand special rights and privileges for their respective communities are not desirous of attacking the basis of the existing structure. If this is admitted then all we can do is to provide safeguards and guarantees for education and economic advancement, specially for all backward groups and communities.

We are certain that as soon as India is free and can face her problems unhampered by alien authority and intervention, the minds of her people will turn to the vital problems of the day. How many questions that are likely to be considered by our future legislatures can be of a communal nature? There may possibly be a few now and then but there can be no doubt that the vast majority of the questions before us will not be communal in the narrow sense. The result will be that parties will be formed in the country and in the legislature on entirely other grounds, chiefly economic we presume. We shall then find Hindus and Muslims and Sikhs in one party acting together and opposing another party which also consists of Hindus and Muslims and Sikhs. This is bound to happen if we once get going.

Looking at it purely from the Hindu point of view, however, we can well imagine that a reservation of seats for the Muslim minorities in the Punjab and Bengal, may actually benefit the Hindus, and may be Sikhs also, more than no reservation. The facts and figures we have stated demonstrate that the Muslim position in the Punjab and Bengal is so strong that in all likelihood they will gain in a joint electorate with no reservation more seats than their population warrants. Thus the Hindu and Sikh minorities may find their representation even reduced below their population ratio. This is a possible and indeed a likely contingency. But it is impossible to provide for such contingencies. The safest and most obvious course is to have an open election with such safeguards as we can devise.

The considerations set out above were fully discussed at the informal conference to which reference has already been made and the following resolution was unanimously adopted, sub-

ject to a note by our colleague Sardar Mangal Singh on the second part of the resolution.\*

"We are unanimously opposed to the reservation of seats in the legislatures either for majorities or minorities and we recommend that no such reservation should be provided for in the constitution. But if this recommendation is not accepted and an agreement can be arrived at only on a reservation of seats on the population basis we recommend that such reservation be made for majorities or minorities without any weightage and with a clear provision that it shall automatically cease at the expiry of ten years or earlier by the consent of the parties concerned".

The note of Sardar Mangal Singh runs as follows :—

"I agree with the first part of the above proposition, namely that there shall be no reservation of seats either for majorities or minorities in the legislatures of the country. But I am very strongly opposed to the creation of statutory communal majorities by reservation of seats for majorities on population basis under all circumstances and for any time howsoever short it may be. If the agreement can only be reached by reservation of seats I will recommend that the case of the Sikhs be considered as that of an important minority and adequate and effective representation, far in excess of their numerical strength, be given to them in the Punjab on the basis adopted for Muslim minorities under the Lucknow Pact in Behar and other provinces. And I further suggest that special weightage be given to Sikhs for representation in the central legislature".

It will be seen that the first part of the resolution contains the actual recommendation of the informal conference and the second part deals with a contingency which can happen, if at all, only when that recommendation is rejected in favour of an agreement by all the parties concerned on reservation of seats on the population basis. There has not only been no such agreement among the members of this Committee but they have definitely expressed themselves in the first part of the resolution to be unanimously opposed to reservation. It is highly unlikely that the agreement referred to in the second part of the resolution will be reached in the All Parties Conference. But if by any chance such an agreement is arrived at, it would be binding on all those who join it and in that case all that the second part provides is that it should not be given effect to for more than ten

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\* A list of those who signed the resolution is given in a note at the end of the report.



years. We cannot be taken to have recommended what we have expressly opposed. But we recognise the value of a compromise between parties and communities however wrong it may be in principle, and if such a compromise is arrived at in spite of ourselves, we can do no more than try to limit its operation. This is exactly what we have done. As regards the special claim of the Muslims and Sikhs for greater representation than their population would justify, it is enough to say that in the view we have expressed above, no such claim is admissible on the part of any community however important it may consider itself to be.

We shall have to revert to the resolution of the informal conference in considering the question of reservation for minorities to which we now address ourselves.

Muslims in provinces other than the Punjab and Bengal are in small minorities and in some parts of India almost negligible, though in the total population of India the proportion is over 24 per cent.

After the resolution of the informal conference referred to above was passed it was pointed out to us that it would work great hardship on the Muslim minority who would in all probability be able to elect no more than 30 or 40 Muslims from the Punjab and Bengal, and perhaps one or two from the U. P. and Behar, to the central legislature of 500 members, and that there was little chance of any of the other provinces with less than 7 per cent. of the population returning a single Muslim. The result, it was argued, would be that Muslims, who form nearly one fourth of the total population of British India, would have no more than one tenth of representation in the central legislature. The same reasoning, it was urged, applied to the legislatures of provinces where the Muslims are in small minorities. We recognise the force of this argument and it is here that we feel compelled by force of circumstances to introduce a temporary element of communalism in the electoral system of the country. We are therefore unable to adopt the resolution of the informal conference of the 7th July in its entirety as our recommendation. In provinces other than the Punjab and Bengal we must

Reservation for minorities

Reservation for Muslim minorities in proportion to population

make an exception in favour of Muslim minorities by permitting reservation of seats, if so desired by them, in proportion to their population both in the central and the provincial legislatures. The retention of communal representation to this extent for some time to come is in our opinion a necessary evil. It will be seen that by making this concession in favour of Muslim minorities we are not introducing the anomalies arising out of reservation for majorities. A minority must remain a minority whether any seats are reserved for it or not and cannot dominate the majority.

Representation in excess of their proportion in the population fixed for Muslims in a number of provinces under the Lucknow pact, as well as the Montagu-Chelmsford reforms, will disappear under our scheme. Such representation is only possible in separate electorates and has no place in joint or mixed electorates. It is of course not physically impossible to reserve a larger proportion of seats for Muslim minorities than their population would justify but, apart from the obvious injustice of such a course not only to the majorities but to the other minorities as well, it will in our opinion be harmful to the development of Muslims themselves on national lines. We have allowed them their full share on the population basis by reservation and anything over and above that share they must win by their own effort. We do not propose to impose any restrictions on their right to contest a larger number of seats than those reserved for them. The main consideration which has guided us in accepting reservation for their minority is that we are not thereby putting it in a ring-fence beyond which it cannot advance however competent it may be to do so. It is in our opinion more important to secure a free and open field for the expansion of the political activities of all communities large or small than to reserve a maximum number of seats for them even in excess of their numbers. Such reservation will never bring them in open competition with any community other than their own and the inevitable result will be stagnation. It is true that a Muslim candidate will have to canvass non-Muslim votes to defeat his Muslim rival but this is not calculated to advance the Muslim on national lines. It will always

be a question of whether Muslim A is better than Muslim B without regard to the fact that non-Muslim C is better or worse than both.

Muslims cannot reasonably claim reservation of seats beyond their strict proportion to population along with the right to contest additional seats, and the question for them to consider is which of the two is likely to be of greater advantage to them. We have no doubt that when they carefully weigh the pros and cons of the reservation of a larger number of seats than they are entitled to on the population basis *without* the right to exceed that number, against the pros and cons of reservation in proportion to their population *with* the right to contest as many more seats as they like, they will find that the latter is by far the better choice. As we have already pointed out, reservation to the fullest extent deprives mixed electorates in a considerable measure of their utility in promoting national unity. Whatever inducement a Muslim candidate may have to approach the non-Muslim voter to defeat his Muslim rival, so far as his community as a whole is concerned, it will have its full quota assured to it with or without the help of the non-Muslim voters, and at times of extreme communal tension it will be easy both for Muslims and non-Muslims to run their elections quite independently of each other without either losing a single seat. It is only by maintaining the interdependence of the two communities that we can hope to minimise their differences.

Having regard to the actual conditions prevailing in the U. P., where the Muslim minority is the largest, we are convinced that the Muslims stand to gain more seats under our scheme than the number fixed for them under the present system. In several urban areas in the U. P. they are in majorities and in others they have strong and influential minorities. They may perhaps lose a few seats in some other provinces but the net result of a general election in the country as a whole is likely to be fairly satisfactory to all.

So far as the Muslim demand is concerned it only remains for us to deal with that part of it which relates to reservation of one third of the total number of seats in

Reservation for Muslims in the central legislature

the central legislature for Muslims. This point was not directly raised or discussed at the informal conference, but we think that it is concluded by the general recommendations we have made in regard to reservation of seats. The principle we have adopted is that wherever such reservation has to be made for the Muslim minority it must be in strict proportion to its population. The Muslims are a little less than one fourth of the total population of British India and they cannot be allowed reservation over and above that proportion in the central legislature. It must be remembered that they have the right to contest additional seats both for the central and provincial legislatures in provinces other than the Punjab and Bengal, and that in the two last mentioned provinces their right is unfettered to contest any number of seats they like for both legislatures. In the case of provincial legislatures we have substituted this right for the present weightage they enjoy. In the central legislature the Muslims do not at present enjoy any definite weightage and their numbers to be returned by the provinces are fixed on a more or less arbitrary basis. The actual number of the Muslim members falls short of one third of the total strength of the Assembly. There is thus no foundation for the demand even in existing conditions. A little reflection will show that it is far better to have a free hand than to be tied down to the difference between  $\frac{1}{3}$  and  $\frac{1}{4}$ . But as we have already observed we cannot depart from the principle we have accepted for the Muslim minorities in the provincial legislature. Besides the question of principle there are practical difficulties in the way. How are we to secure this one third reservation in the central legislature without restricting the Punjab and Bengal majorities to definite numbers of members and allowing weightage in the other provinces all round? And on what principle is the excess in the numbers of members in the provinces to be allotted to each province? We have given our best consideration to the matter but we regret we are unable to recommend reservation of one third of the total number of seats for Muslims in the central legislature.

[For these reasons we recommend reservation of seats,  
 Recommendation when demanded, for Muslim minorities  
 both in the Central and Provincial

legislatures in strict proportion to their population, with the right to contest additional seats for a fixed period of ten years. We would add, however, that our colleague Mr. Shuaib Qureshi does not agree with some of the arguments and conclusions given above. He is of opinion that the resolution of the informal conference, referred to above, should be adopted in its entirety. He further desires that one third of the seats in the Central legislature should be reserved for Muslims.

As regards non-Muslim minorities the only provinces which deserve consideration are the Non-Muslim minorities in N. W. F. and Baluchistan N.W.F. and Baluchistan where they are in much the same position as the Muslim minorities in Madras and the C. P. We recommend that the same concession be made to them as to the Muslims in provinces other than the Punjab and Bengal.

Turning to the other non-Muslim minorities we find that there is no such sharp cleavage between them and the majorities among whom they live as there unfortunately is between Hindus and Muslims. We do not think that any protection by way of reservation is either necessary or desirable in their case. They will realize that we are recommending such protection to Muslim minorities under very special circumstances and for a limited period only. The latter have sooner or later to stand on their own legs. We shall indeed be glad if they will make up their minds to do without reservation from the beginning.

There is no analogy between the Muslim and non-Muslim minorities in India. The latter are nowhere when the total population of India is considered. Leaving out the case of Buddhists, who are to be found chiefly in Burma and are in a majority there, the percentage of the population of other non-Muslim minorities to the total population of India is as follows :—

Christians	1.2%
Sikhs	1.0%
Jains	.2%
Others (besides tribal religions in hill tracts)	.2%

It will thus appear that so far as the central legis-

lature is concerned the reservation of seats for non-Muslim minorities on a population basis will hardly help them to any appreciable extent and that there is no occasion to reserve seats for minorities, other than those in the N. W. F. Province and Baluchistan, even in the provincial legislature. Any attempt to do so will only cause confusion and will in our opinion be a very doubtful advantage to the communities concerned.

We have not mentioned the Hindu minorities in the Punjab and Bengal as by no stretch of the imagination 32 and 45 per cent of the population can be regarded as small minorities.

Among the non-Muslim minorities the Sikhs deserve special consideration. They are concentrated in the Punjab and the position they occupy in that province is very similar to that of the Muslims in the U. P. The latter being about 15% of the population are in fact more numerous in the U. P. than the Sikhs in the Punjab where they are only 11%. Under the existing system they have their separate electorate and are given considerable weightage. We recognise that Sikhs are a distinct and important minority which cannot be ignored and we have, all along, been giving our best consideration to the point of view of the Sikhs as expressed by our colleague Sardar Mangal Singh. It must be said to their credit that they have shown an admirable spirit of self-sacrifice by their decision to give up these communal advantages in the general interest of the country. Throughout the communal controversies that have raged round the question of representation in the legislature during recent years they have taken their stand on joint electorates with no reservation for any community. Our colleague Sardar Mangal Singh has drawn attention to the fact that the Sikhs do not form the majority of the total population of any district in the Punjab, and that the strongest position they occupy is in Ludhiana district where they are the strongest single community. Even in this district they are only 41.5 % and are not in a majority. In every other district they are outnumbered either by Muslims or Hindus, and, usually by both. It is obvious that situated as the Sikhs are in the Punjab they are subject to all the disadvantages of a minority

in a joint mixed electorate based on the wide adult suffrage we have recommended. In these circumstances they have in the Punjab at least as strong a case for reservation both in the provincial and central legislatures as the Muslims have in the U. P. There is however a third and a very potent factor to be taken into account and that is the presence of the strong Hindu minority side by side with the Muslim majority and the Sikh minority. It is this circumstance in the Punjab which, apart from general considerations has so far defied all attempts at a satisfactory adjustment on the basis of reservation for any community. The Punjab problem has assumed an all India importance and we cannot look at it as an isolated case arising in a single province. The only effective way of avoiding complications and giving full play to the forces of nationalism is to eradicate the virus of communalism from the body politic of the Punjab. Our colleague, Sardar Mangal Singh, who has discussed the matter very fully and frankly with us shares our difficulty. We believe that nothing is farther from the wishes of the Sikh League than to introduce any complications directly or indirectly in the solution of the communal problem. They could, if they had insisted on any special advantage, have caused endless difficulties in the adoption of a uniform rule of representation. They fully realised this and voluntarily gave up all their claims with the sole object, we are assured, of preventing an impasse. We appreciate this spirit and congratulate them on their patriotic resolve.

The only alternative to the proposal we have made is to adopt the recommendation of the informal conference and have no reservation for any minorities, including Muslims, in any legislature. But this will cause considerable dissatisfaction to Muslims without conferring any special benefit on non-Muslims. It must be remembered that besides reservation by means of communal electorates the Muslims at present enjoy considerable weightage in every province. We are offering them the right to contest additional seats in lieu of this weightage and we cannot very well do away with reservation in their case. We see no hardship in this to non-Muslim majorities or

minorities. Endless complications will arise if we recommend reservation for all minorities. Besides the existing well defined minorities such as Christians, Parsis, Jews, fresh groups from among the Hindu castes and sub-castes will claim the right and it will be a perpetual source of trouble.

The communal question is essentially a Hindu-Muslim question and must be settled on that basis. We shall indeed be doing poor service if in our attempt to settle it we let communalism loose on the country to swallow up communities and sub-communities most of whom have not even dreamt of it.

There remain two important communities included in the Hindu majority—the non-Brahmans and the depressed classes. The sharp division between Brahman and non-Brahman is to be met with only in the south and is unknown in other parts of India. Where the non-Brahmans as such are found, they are either an overwhelming majority as in Madras or a very strong minority as in parts of Bombay. They need no protection in the matter of representation in the legislatures as has been established by the elections held in recent times. Their grievances against Brahmans are all traceable to the ascendancy gained by the latter in the political and social life of the country. This is the natural result of their intellectual ascendancy which is now seriously threatened by the rapid advance of non-Brahmans.

The problem of the “depressed” or “suppressed” classes has come to the front in recent years and their present condition is put forward as an argument against the political advancement of India. We are certainly of opinion that the Hindus are chiefly responsible for this suppression of a large class, but we are equally clear that the solicitude for this class which the British government has endeavoured to show has its basis on reasons other than humanity or love for this class. This solicitude is of very recent growth. As the national movement has grown in the country, so has the political value of the “depressed” classes grown in the eyes of the government. It is only since 1917 that their numbers have been separately given in the official reports on educa-



tion and reference has been made to the educational facilities offered to them. The solicitude of government has so far brought little relief to these classes. It has resulted in giving them some nominated seats in the legislatures and some minor contributions for special schools.

Far more serious and effective attempts have been made by non-official Indian agencies to raise these classes. The Christian missions have also helped in this task. The Congress made the abolition of untouchability one of its principal planks in 1920 and, as is well known, Mahatma Gandhi has thrown himself with all his great powers and energy into the movement. Other political organisations, and we are glad to find even communal organisations, have with equal emphasis declared against untouchability. The practical work done and the considerable results achieved already make it quite clear that these declarations were not mere pious wishes. We realise that there are still conservative elements in the country which are strong enough to put obstacles in the way and retard the progress of the movement. But we are convinced that untouchability is doomed.

In our suggestions for the constitution we have not made any special provision for the representation of the "depressed" classes in the legislatures. This could only be done by way of special electorates or by nomination. We have dealt fully in another place with the question of special electorates and reservation of seats. We are not prepared to extend this unsound and harmful principle if we can help it, nor do we think that we will do any good to these classes by ensuring some seats for them in this way. We are still more opposed to nomination. This can only result, as it has resulted, in the government of the day nominating some one who will support it through thick and thin, and will not represent anybody.

We feel strongly however that the "depressed" classes must be abolished or rather that they should be raised socially and economically so that they may take their proper place in the community. The only effective way to do this is to give them educational and other facilities for this advance and to remove all obstacles in

the way of this advance. Some of the articles in the Declaration of Rights, which we have recommended, will go a long way to remove the disabilities from which these classes suffer and will give them an opportunity to go ahead. The proposal that we should have adult suffrage will also automatically raise their level and increase their political power. Finally, we have strongly recommended that the education of all backward classes should be a special concern of the state. If all these recommendations are acted upon we are convinced that the "depressed" classes will rapidly disappear and will be replaced by a self-reliant and progressive group, co-operating with other groups in the welfare of the entire community.

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## CHAPTER IV

### REDISTRIBUTION OF PROVINCES

We are glad to take leave of communal problems and enter upon matters more germane to the constitution. The question of redistribution of provinces as a part of the constitution should ordinarily be disposed of by a few general rules governing all cases. But, as we have seen, the simplest problems have a tendency to become difficult and almost insoluble if approached in the wrong spirit and considered not on their own merits but as parts of an entirely different problem. We have already dealt with the communal aspect of the separation of Sind from Bombay and shown how a very simple matter has become a major issue in our politics. We shall now consider the general question on the merits apart from its communal bearings.

Every one knows that the present distribution of provinces in India has no rational basis. It is merely due to accident and the circumstances attending the growth of the British power in India. As a whole it has little to do with geographical or historical or economic or linguistic reasons. Even from the purely administrative point of view it is not a success. It is clear that there must be a redistribution of provinces. Some of us favour small provinces, others prefer large provinces. But small or large the question of redistribution has to be tackled.

What principles should govern this redistribution? Partly geographical and partly economic and financial, but the main considerations must necessarily be the wishes of the people and the linguistic unity of the area concerned. It is well recognised that rapid progress in education as well as in general culture and in most

Present distribution  
irrational

Principles of redistribution

departments of life depends on language. If a foreign language is the medium of instruction, business and affairs and the life of the country must necessarily be stunted. No democracy can exist where a foreign language is used for these purposes. A democracy must be well informed and must be able to understand and follow public affairs in order to take an effective part in them. It is inconceivable that a democracy can do this if a foreign language is largely used. It becomes essential therefore to conduct the business and politics of a country in a language which is understood by the masses. So far as the provinces are concerned this must be the provincial language.

We are certainly not against the use of English.

Language                      Indeed from the necessities of the situation we feel that English must, as at present, continue for some time to come to be the most convenient medium for debate in the central legislature. We also believe that a foreign language, and this is likely to be English, is essential for us to develop contacts with the thought and science and life of other countries. We are however strongly of opinion that every effort should be made to make Hindustani the common language of the whole of India, as it is to-day of half of it. But, granting all this, provincial languages will have to be encouraged and, if we wish the province to make rapid progress, we shall have to get it to do its work in its own language.

If a province has to educate itself and do its daily work through the medium of its own language, it must necessarily be a linguistic area. If it happens to be a polyglot area difficulties will continually arise and the media of instruction and work will be two or even more languages. Hence it becomes most desirable for provinces to be regrouped on a linguistic basis. Language as a rule corresponds with a special variety of culture, of traditions and literature. In a linguistic area all these factors will help in the general progress of the province.

The National Congress recognised this linguistic principle 8 years ago and since then, so far as the Congress machinery is concerned, India has been divided into linguistic provinces.

Another principle which must govern a redistribution of provinces is the wishes of the people concerned. We who talk of self determination on a larger scale cannot in reason deny it to a smaller area, provided of course this does not conflict with any other important principle or vital question. The mere fact that the people living in a particular area feel that they are a unit and desire to develop their culture is an important consideration even though there may be no sufficient historical or cultural justification for their demand. Sentiment in such matters is often more important than fact.

Thus we see that the two most important considerations in rearranging provinces are the linguistic principle and the wishes of the majority of the people. A third consideration, though not of the same importance, is administrative convenience, which would include the geographical position, the economic resources and the financial stability of the area concerned. But administrative convenience is often a matter of arrangement and must as a rule bow to the wishes of the people.

In looking at the map of India to-day we see definite linguistic areas. There is the huge Hindustani block all over northern India, with its slight variation into Punjabi in the Punjab. Then there is the Bengali area, the Assamese, the Oriya, the Telugu, Tamil, Malayalam, Canarese, Marathi, Gujerati and Sindhi. Across the Bay of Bengal there is the Burmese area. Demands have been made from time to time for the separation of Andhra, the Telugu area, of Utkal (Oriya) of Karnatak (Canarese), Kerala (Malayalam) Sind (Sindhi) Central Provinces (Hindi speaking area) and other parts, and all these will have to be enquired into and carefully considered when a general redistribution is taken in hand. We have no material before us to give any opinion about most of these areas. We have received no representations except in regard to the Karnataka and Sind. We have also received a small book

giving the case for Utkal but we regret we have been unable to consider it in the absence of any special memorandum or representation. Our colleague, Mr. Subhas Chandra Bose, is however satisfied that the Oriya speaking areas should

be amalgamated and constituted into a separate province, if this is financially possible. He is further of opinion that the demand for the amalgamation of the Bengali speaking tracts in Assam and Bihar and Orissa is a reasonable and legitimate one.

As regards Kerala we have received a resolution of their Provincial Conference urging unification and separation. *Prima facie* Kerala offers a great many difficulties as a great part of it consists of the States of Travancore and Cochin. Leaving out these States, as we must under present circumstances, we have a small area. We are thus at present not prepared to make any recommendation, in the absence of any material, in regard to Kerala.

The case for the Karnataka was placed before us by a representative of the Karnataka Unification Sangh and the Karnataka Provincial Congress Committee. It had been ably prepared with a wealth of information, historical, cultural and statistical. All our questions were answered satisfactorily and in our opinion a strong *prima facie* case for unification and the formation of Karnataka as a separate province was made.

Parts of the Karnataka lie in Indian States, notably Mysore, and there are obvious practical difficulties in the way of uniting these with the rest. It might also not be convenient to unite the small islands of the Karnataka on the other side of Mysore territory as these would be cut off from the Karnataka proper by Mysore. But even so a sufficiently large area remains.

We were informed that the demand for unification came from the vast majority of the population, if not practically all. There was no Hindu-Muslim problem but there was a Brahman-non-Brahman problem although this did not effect the question of unification much. There was no organised opposition although a small number of Brahmans were opposed. On behalf of the Maharashtrians in some of the border districts a fear was expressed that their language might suffer, but safeguards for this might be provided for.

Financially the position of the Karnataka was very

strong and even at present there was a considerable surplus in the British part of the Karnataka.

Our colleague, Mr. M. S. Aney, does not wholly agree with our view point regarding the Karnataka. He was unfortunately not present at the sitting of the Committee when this question was considered with the help of the representative from the Karnataka. Mr. Aney is of opinion that the opposition may be greater than we imagine and they may not have approached us as they did not know that we were considering the question. This is hardly likely as the press of the Karnataka has been full of this question and considerable publicity has been given to the Karnataka representation to our Committee. If any body of men felt keenly enough in opposition to this demand we think that they would certainly have informed us of their views.

We cannot of course decide this question finally but we feel that the advocates of unification have *prima facie* established their right to it. We cannot suggest the exact limits of the new province. It may be that some of the border tracts are bilingual and an enquiry will have to be made on the spot. This work will have to be done by an expert committee. Messrs. Aney and Pradhan refrain from expressing any opinion on this subject.

It is unfortunate that although the separation of Sind has given rise to a great deal of heated argument, we are yet not in possession of all the relevant facts, such as were placed before us by the representative from the Karnataka. We would commend the way the Karnataka case was prepared, with patient thoroughness and maps and statistics, to those who have demanded the separation of Sind. As we have already pointed out, the All Parties Conference appointed a sub-committee in Delhi to investigate the financial aspect of the question, but unfortunately no facilities were placed before this Committee by the supporters of separation, and it has not yet reported. We do not know if it is likely to submit any report in the near future. For the present, however, we have to proceed on general principles and without the help which actual authenticated figures might have given us.

We laid down two important general considerations

in regard to the distribution of provinces—linguistic and the wishes of the majority. Sind certainly satisfies both these tests. It is a definite linguistic area and the great majority of its people may be taken to demand separation. We have of course no definite data about the number of people desiring separation. But we have yet to know that even a single Musalman opposes it, and Musalmans are 74% of the population. We also know that some at least of the members of other communities in Sind—Hindus and Parsis—support separation. We may therefore safely presume that the great majority of the population desire separation. We are aware that there is a section amongst the Hindus, comprising it may be most of the Hindus in Sind, which is strongly opposed to separation. It has been urged that before a province is separated a section—one third has been suggested—of the minority community must also agree to such separation. This, it seems to us is an utterly wrong principle, cutting at the roots not only of self-determination but of the very principle of decision by majority and is likely to lead to extraordinary results. For instance, it may be, that 10% or 15% of the population may effectively prevent the 90% or 85% from having their way. This is not democracy.

Then again what is the minority community in such a case? Ordinarily a redistribution of provinces is not likely to be a Hindu-Muslim or communal question. The minority which opposes will oppose on the merits and not on communal grounds. How is a single person belonging to this minority to be made to change his opinion? And if some people are converted, another minority remains and it may be urged again that one-third of these should be won over.

Sind undoubtedly satisfies the two main tests. Further it is clearly a geographical unit and its connection with Bombay is a most unnatural one. It is not even easily accessible from Bombay and thus from an administrative point of view a separation is desirable.

It is stated, however, that economically, and even more so financially, Sind cannot shoulder the burden of a separate provincial existence. It is further stated that there is a large deficit in Sind every year which is met from the revenues of other parts of the Bombay



presidency. We are of opinion that ordinarily a province should be self-sufficient in regard to finances and must not look to the central government for doles. We can imagine exceptional cases when the central government might reasonably help the development of a province for a short period in order to make it self-sufficient in the future. There may also be other special cases when such help may be necessary. But an area which desires separation must not live in hopes of money flowing in from outside to enable it to run its administrative machine. It must feel and declare that it will shoulder its own burden.

We shall presume that Sind is at present carrying on its government with the help of outside money. But this does not carry us very far. It may be that a retrenchment in the scale of expenditure will make both ends meet. It may also be, and this is likely, that additional sources of revenue from fresh cultivation or otherwise will increase its income considerably. This problem will have to be faced all over India as soon as we are free. Our first thought then will be to spend money on the development of the country and specially in the nation building departments. This money can only come by applying the axe to provincial expenditure and by tapping fresh sources of revenue.

*Prima facie* Sind is capable of great development. Karachi is likely to become a great harbour and there are large tracts which are either uncultivated or not sufficiently developed. It is not an unlikely presumption therefore that Sind will become in the course of time a self-sufficient and prosperous province.

A denial of the right to self determination on purely financial grounds, and there are no other that we think valid, is bound to lead to great dissatisfaction and is bound to impede the progress of Sind. All the energy that should go to building up the life and work of the province would be spent in profitless agitation. If however this right is granted, subject to the people of Sind shouldering their own financial burden, a strong impetus will be given to the new province to work hard and compete with the more advanced provinces.

We feel therefore that the argument for the separation of Sind is very strong. In the absence of

sufficient data regarding the financial position we are unable to give a definite opinion on it. But it is unlikely, to say the least of it, that financial considerations will be such as to override all the other important factors which we have discussed. We would say therefore that unless some insurmountable difficulties supervene, and we are for the present unable to imagine any such insuperable difficulties, Sind should be separated.

We would add that our colleague Messrs Aney and Pradhan are not wholly at one with us in the arguments we have advanced. They agree that Sind is a linguistic area and that there is a strong demand from the majority of the population for separation. But before giving a final opinion they wish that an enquiry be made into the financial and administrative aspects. We ourselves are of opinion that some investigation into the financial aspect will be necessary before separation can be effected.

We might add that the separation of an area and the formation of a new province does not necessarily imply a separate economic life. Nor does it mean a duplication of all the organs of government. For instance it is quite possible for one High Court to serve more than one province.

Before leaving the subject of Sind we must notice a document called the "Sind Pact" received from the Sind National League. It consists of ten clauses covering a wide field and bears 31 signatures of Hindu, Muslim and Parsi gentlemen. We have also received representations from the Sind Aryan Sammelan and the Sind Provincial Hindu Sabha and a number of telegrams from individual Hindu Sindhis repudiating this pact and challenging the representative character of its authors. We have no materials before us to judge between these rival claims to represent Sind nor do we think it is any part of our business to do so. It is clear that there is no such general agreement among Sindhis as would impose an obligation on this Committee to adopt the "pact" as such. As a representation from a number of responsible gentlemen it has had our very careful consideration. We have already noticed the clause relating to the reservation of seats and expressed our inability to agree to it. As regards the desirability of the separation of Sind from Bombay we are at one with

them, but we regret we cannot take their declaration to "cut their coat according to their cloth" as a final solution of the financial problem. This matter must for the present rest where we have left it. It is not necessary to notice the other clauses of "pact".

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## CHAPTER V

### THE INDIAN STATES AND FOREIGN POLICY

We now come to the all important problems of the Indian States. At the commencement of our treatment of the subject we desire to enter a caveat against the general criticism (which it has become the fashion in certain quarters at present to make against public men in British India) that they ignore in their discussions or their schemes the very existence of the Indian States and the problem of their relations to the Government of India of the present or of the future. It is not, we maintain emphatically, the fact that the Indian States or their problems; or the readjustment of their relations to the Government of India, have been ignored in the past on public platforms, or in political conferences, or in the utterances of our public men. If the grievance is that the affairs of the Indian States, or the nature and character of their relations with the Government of India, have not been discussed on the floor of the Legislative Assembly, the answer is plain and it is that such discussion is barred by the standing orders and in practice is never allowed. It is obvious that for this the responsibility cannot be fixed on Indian public men. On the other hand, there is scarcely a political organisation of influence in the country which has not had in recent years to say something or other on the problem of the Indian States. The Congress and the Liberal League and the Hindu Sabha and lastly the All Parties Conference, to which this Committee owes its existence, have so far from ignoring the problem, laid considerable stress on it. The subjects of the Indian States also have been showing a lively interest in the internal affairs of their respective States and urging for a definite recognition of popular rights and liberties. They have

Attitude of public men  
and organisations to-  
wards Indian States

held two representative conferences and a committee appointed by the second held at Madras has approved and recommended to us a scheme of Swaraj embracing British India and the Indian States. We shall deal with this scheme later on. We are aware that the sensitiveness of some Indian princes has in recent years been touched by what they consider to be a somewhat obtrusive interest taken in them by public opinion in British India, which they have condemned as either lacking in knowledge, or political sagacity, or sympathy. We, therefore, very strongly repudiate the ill-founded charge that intelligent public opinion in British India has been too self-centred to look beyond the confines of British India or has shown any unwillingness to understand the view point of the Indian princes or their subjects, or even to sympathise with it wherever and whenever it has been possible to extend sympathy. If it has at times been critical of some of the "claims" of the Indian princes, or if it has at times approached their internal problems or tried to envisage the development of the constitutional relations between them and the future self-governing India from a different angle of vision, it is no more than what it is clearly entitled to do. We are afraid that the present tendency to stress the problem of Indian States as presenting insurmountable obstacles in the way of British India achieving dominion status is full of incalculable mischief for both and instead of helping to bring the "two Indias" closer to each other is likely to give rise to serious misunderstandings.

While the fact that there is an "Indian India" consisting of these States—some almost as big as, if not bigger than, some of the countries of Europe—enjoying, in a way 'internal sovereignty', 'autonomy' and 'independence', dignities and status—may be and has to be freely admitted, we think it would be very poor statesmanship and shortsighted policy to ignore those obvious historical, religious, sociological and economic affinities which exist between the people of British India and the people of these States. Nor do we think that it is possible to erect artificial geographical barriers between the two Ideas and opinion travel from one part of

Affinities between  
British India and Indian  
States

India to another much more rapidly than was the case 60 or 70 years ago, and it would be absurd to deal with the problem of Indian States on the assumption that the dynamic forces now in operation in British India can for a very long period of time be expected to spend themselves on the borders of British India. It is inconceivable that the people of the States, who are fired by the same ambitions and aspirations as the people of British India, will quietly submit to existing conditions for ever, or that the people of British India, bound by the closest ties of family, race and religion to their brethren on the other side of an imaginary line, will never make common cause with them. In dealing with the problem, therefore, we would much rather base our conclusions upon the community of interests than upon differences of form. This community of interest would clearly point to joint action by the parties concerned as the most natural course to adopt with a view to mutual protection and advancement. Indeed if there ever was a case for a round table conference at which a perfect understanding could easily be reached it was this. With the representatives of the princes, of their people, of the British government, and of the people of British India assembled at such a conference all difficulties could have been solved with mutual good will. But most of the princes have unfortunately chosen to ignore the two most important parties—their own people and the people of British India—and have asked for or acquiesced in the appointment of the Butler Committee which, apart from the absence of necessary parties, is precluded by its very terms of reference, as we read them, from dealing with the constitutional issue. This committee is sitting in camera but such information as is available from published statements leaves no doubt in our minds that an attempt is being made to convert the Indian States into an Indian Ulster by pressing constitutional theories into service.

We have referred in our introduction to the constitutional question raised by Sir Malcolm Hailey in his speech in the Legislative Assembly in February, 1924. The same or similar questions have since been raised in other quarters and we now proceed to deal with them.

The constitutional position notwithstanding some vagueness that may surround it, is by no means difficult to understand. It is claimed that according to true constitutional theory the Indian States are and have been in relation with the Crown, whether their treaties were with the East India Company, or the British Crown, or whether they have been entered into since 1858 with the Government of India. Now it is obvious that the Crown under the constitution does not mean the King alone. It is a convenient constitutional phrase used to indicate the King-in-Parliament. Before 1858, the East India Company exercised sovereign rights under powers delegated by the 'Crown' and since 1858 those powers have been exercised under delegated authority by the Government of India and the Secretary of State, who is an integral part of the machinery established by Parliament for the Government of India. Section 67 of the Act of 1858 provided that "all treaties made by the said Company shall be binding on her Majesty" and similarly section 132 of the Act now in force provides that "all treaties made by the East India Company so far as they are in force at the commencement of this Act are binding on his Majesty". In point of fact, the enforcement of those treaties, the fulfilment of the obligations created by those treaties, and the interpretation of those treaties, have hitherto been among the normal functions and duties of the Government of India, subject to a so-called 'appellate' or supervisory jurisdiction of the Secretary of State for India. It is inconceivable that any Indian prince could, under the present constitution, ignore the Government of India or the Secretary of State and take up any matter relating to such obligations to the King or to his Majesty's Government. Again, the fact is that the Government of India have acquired certain powers by mere practice, usage or convention which are outside the scope of the written treaties. The Foreign Jurisdiction Act of 1890, and the Indian Foreign Jurisdiction Act XXI of 1879 have not unoften been resorted to by the Government of India for the extension of their jurisdiction.

By the resolution dated the 29th of October, 1920,

Resolution of Government of India

the Government of India have given effect to the recommendations contained in paragraph 309 of the report on Indian Constitutional Reforms which prescribed a procedure for dealing with cases in which "the question arises of depriving a ruler of an important State, temporarily or permanently, of any of the rights, dignities, powers or privileges to which he, as a ruler, is entitled, or debarring from succession the heir apparent or any other member of the family of such ruler who according to the law and custom of his State is entitled to succeed".

Lord Reading on the constitutional position

In his letter dated the 27th March, 1926, Lord Reading emphasised the constitutional position as follows :—(a) The sovereignty of the British Crown is

supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British government, while scrupulously respecting all treaties and engagements, to preserve peace and good order throughout India. (b) The right of the British government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. (c) The varying degrees of internal sovereignty which the rulers enjoy are all subject to the exercise by the paramount power of this responsibility".

It is a matter of common knowledge that the exercise of these large powers, or to be more accurate, the decision of the Government of India to exercise these powers in the case of some princes in recent years, has been the subject of much comment and dissatisfaction and the exposition of the constitutional position in Lord Reading's letter to his Exalted Highness the Nizam, from which we have quoted above, has led since to much searching of heart. It is not our intention or purpose to discuss the merits of the claim put forward in that letter. We simply desire to draw attention to it to show that even these large powers can only be exercised



at the discretion, upon the initiative, and by the machinery of the Government of India.

By usage or convention, or as a necessary corollary to the paramountcy of British power, the Government of India have claimed and exercised the right of (a) "installing" princes on the *gaddis* (b) administering the States during the minority of the ruler, (c) settling disputes between rulers and their *jagirdars* and (d) interfering in cases of gross misrule. With any legitimate desire on the part of the Indian princes to get their grievances in these respects remedied, it is possible, even for democratic India to sympathise ; and we feel that it is by no means impossible or impracticable to define the limits within which the Government of India, as it is constituted at present, or as it may be in future, may seek to interfere. We think however that the plain fact ought not to be overlooked that the Government of India as a dominion will be as much the King's government, as the present Government of India is, and that there is no constitutional objection to the dominion government of India stepping into the shoes of the present Government of India.

If there are personal ties of allegiance or devotion which bind the Indian princes to the throne, person or dynasty of the King, they cannot, and ought not, to suffer in strength by a change or modification in the composition of the King's government in India, when India attains dominion status. There will always be plenty of room for the discharge of those duties to the Crown and for the exercise on the part of the Crown of those prerogatives which may be inseparable from the personal relation that might have subsisted between the Crown and the Indian rulers.

We shall now turn to the latest contribution on the subject. It comes from no less distinguished an authority than Sir Leslie Scott, the learned counsel engaged by the princes, who has expressed his views in a letter which has been printed in the July number of the "Law Quarterly Review". We recognise his eminence as a lawyer, but we cannot help feeling that his views as counsel for the Indian princes have yet to be tested by an independent judicial or legal authority after having both sides of the question presented

Sir Leslie Scott's views

to it. So far as we are concerned we venture to differ from him entirely. After laying down that the relationship between the Crown and the Indian States cannot be governed either by international or municipal law, Sir Leslie Scott asks 'To what system of legal principles then are the relations of an Indian State to the Crown referable? There is no legal decision to serve as precedent, no complete analogy to guide. Resort must be had to first principles of law. We must think things out for ourselves. It is almost a virgin field for the lawyer'. Even if it is a virgin field for the lawyer, and we venture to say this is not quite correct, we think it is more a case for the constructive statesman than for the analytical lawyer. Sir Leslie Scott has in this letter stated five definite propositions, some of which may be admitted to be correct, others of which strike us as being too broadly put. In any case the conclusion which is sought to be drawn from these propositions is of such far-reaching consequence that it may be taken as definitely certain that if the Indian princes decide to take their stand upon the position so ingeniously argued out for them, British India must substantially discount their profession of sympathy with its aspirations to dominion status, and treat their reference to the federation of India as no more than a vision, the realisation of which must be left to a remote and uncertain future. The first proposition of Sir Leslie Scott is that 'the fundamental tie is consent and its recognition by Britain is unequivocal'. This may be assumed to be true. It implies nothing more than what can be said of any two states bound together by treaties or mutual understandings.

The second proposition formulated by him is that "those contracts are between sovereigns—The Prince and the Crown—not the Company or the Government of British India". This proposition to our mind is untenable historically and legally, and in any case, whatever may be the true legal theory, actual practice shows that the Indian princes and States have dealt with the Government of India, and submitted to its rulings and decisions and intervention, and have never dealt with 'the Crown' or his Majesty's government. The fact that there may be personal relationship between his Majesty and an Indian prince does not in our opinion alter or affect the

real legal position or the interpretation of that legal position in actual practice.

The third proposition is "that the relationship is wholly legal—a nexus of mutual rights and obligations. It is in no sense arbitrary". We should have thought that one of the main grievances of the Indian princes was that the Government of India had in actual practice extended their jurisdiction over them by going beyond the legal relationship in an 'arbitrary' manner. If they are protesting against 'the arbitrary' extension of such jurisdiction, it is in our opinion an understandable position, but it is somewhat remarkable that the importance of this proposition in the setting in which it is stated lies not so much in its practical application in the present, as in relation to possible constitutional developments in British India.

The fourth proposition is that the princes in making these contracts gave their confidence to the British Crown and nation; and the Crown cannot assign the contracts to any third party. "The British Government as paramount power has undertaken the defence of all the States, and *therefore to remain in India with whatever military and naval forces may be requisite to enable it to discharge that obligation.* It cannot hand over these forces to any other Government—to a foreign power such as France or Japan; to a dominion Government such as Canada or Australia; nor even to British India" (*our italics*).

The necessary corollary to this is stated in the fifth proposition *viz.*, that "The Crown can normally choose its agents. But an agent cannot act when his interest may conflict with his duty. In all matters of common concern with the States—customs, railways, ports, the salt monopoly, etc.—there is always the possibility that the interest of British India may not be identical with the interest of a particular State. The Crown's duty is, or may be, to safeguard the interest of the State—particularly in case of a minority administration. Should the interest of the agent be given the chance of conflicting with the duty of the principal"? This if true is putting up an effective barrier against the progress of British India towards dominion status, now and for ever, for it is obvious that if these 'contracts' between the Indian princes

and the British Crown and nation are of a personal character India must always continue to be divided between what is British India and Indian States, and the British Nation must always maintain adequate military and naval forces to discharge its obligations to Indian States. The argument we venture to say does not appear to us as anything more than ingenious. It starts on a false analogy and in applying that analogy ignores the "hard facts" of the case. There is no ground for the assumption that contracts between the princes and the Crown are on the same footing as contracts between private individuals. Sir Leslie Scott has himself pointed out in an earlier part of his letter that the princes continued to retain the attributes of sovereignty even after parting with some of its functions to the Crown. It is as such sovereigns that they must be taken to have dealt with another sovereign whether we take the latter to be the East India Company or the King in Parliament.

Again, it is not true to say that every contract between private individuals is of such a personal character as to be incapable of being performed by any one else. There is no question of one of the contracting parties having any special confidence in the other. The so-called contracts were made under stress of circumstances and would have been of the same or similar character with any other power if it occupied the same position as the British. The argument ignores the settled practice of the Government of India and by invoking so-called first principles in determining the "legal relationship" it overlooks the hard and unchallengeable fact that from the early days of the Company it has been the Government of India and the Government of India alone which has dealt with Indian princes and Indian States. It introduces an element of "personal confidence" between them and the British nation which is not easy to understand. It suggests that the past and present Governments of India which have so far exercised the power, said to be delegated from the Crown, were and are acceptable to the Indian princes and Indian States; but that the future Government of India, if it is to be of the dominion type, will not be so acceptable. This in plain English means that the past and present govern-

ments of India were acceptable because they were essentially foreign in their composition and not responsible to the Indian electorate and that the future responsible Government of India would not be acceptable to the Indian princes because it will consist of their own countrymen and because it will be responsible to an electorate of their own countrymen. But supposing that this is so is there any authority for the proposition that when a "contract" may be performed by an agent the choice of that agent does not rest with the principal but with the other party to the "contract". We have shown that so far the "contract" has been performed by white agents to the apparent satisfaction of the brown princes. On what principle of law, we ask, may that "contract" not be performed by brown agents to the equal if not greater satisfaction of the brown princes?

Let us now consider the argument that the principal cannot delegate to the agent the discharge of obligations where the agent's interest conflicts with his duty. Here again we find that the hard facts have been entirely ignored. The argument overlooks the fact that the agent of the Crown *viz.*, the present Government of India, has been regularly acting when its interest has conflicted with its duty, without any qualms of conscience on the part either of the principal or of the agent and without any public protest on the part of the Indian States. Sir Leslie Scott then says that when "the legal relationship" has been "made clear"—that is to say according to his own conception of that relationship—"suitable constitutional machinery for harmonious working between the two sides of India can be devised, and the States have already made it clear that they are ready and willing to follow such a plan on reasonable lines". In other words if Sir Leslie Scott's theory of personal relationship and personal confidence, and the consequent duty of the paramount power remaining in India to discharge its obligations, is accepted, the princes would be ready and willing to fall in with British India on reasonable lines. Once this argument is accepted as sound it is obvious that whatever be the machinery devised for harmonious working between the Indian States and British India, dominion status

for India must be ruled out for all time to come. We have shown that this argument is wholly unsound, and we sincerely hope that legal ingenuity will not be allowed to prevail against the larger interests of the country, and that the patriotism and statesmanship of the Indian princes, aided by the growing patriotism and love of freedom among their subjects, will be concentrated more upon the establishment of practical machinery for the settlement of issues between them and a responsible Commonwealth of India than upon a determination of the theoretical question of legal relationship, which can do them no good and is fraught with mischievous possibilities which can only lead to disaster. Mutual relations can only be satisfactorily determined with mutual consent and we believe that there is still plenty of room for it. But we must sound a note of warning that the natural and the legitimate aspirations of India cannot and will not be allowed to be defeated or checkmated by ingenious arguments which have no application to facts as they are.

We take special note of the following passage in Sir Leslie Scott's letter :

"The political issues are of first-class importance to the future of India as a whole. Their wise solution will affect directly the successful accomplishment by Sir John Simon and his colleagues of the task imposed by Parliament upon the Statutory Commission for British India. From an Imperial standpoint a statesmanlike treatment of the Princes now may well prove a vital factor in the future attitude of India towards the British Empire".

So that the findings of the Butler Committee arrived at in camera are to decide the fate of the people of British India without the latter being given a chance to be heard, and Sir John Simon and his colleagues, who are themselves not seized of these "political issues of first-class importance", are to be guided by their "wise solution" by the Butler Committee if they are to accomplish successfully the task imposed by Parliament upon them. This was foreseen in India and openly declared from various platforms. We know now exactly what the Statutory Commission is going to accomplish. The only wise solution of these issues.

suggested by Sir Leslie Scott is that the British Government must "remain in India with whatever military and naval forces may be requisite to enable it to discharge its obligations". We thank Sir Leslie Scott for this authoritative forecast of the recommendations of the Statutory Commission which fully justifies the attitude taken in regard to it by all the well-known parties in India.

Leaving aside the theory of the relationship between the Crown and the Indian princes and coming to the position as it is, we maintain that we are right in saying that as a matter of fact and actual practice, it is with the Government of India that the Indian princes come into direct contact in regard to everything that concerns them or their States. It is well-known that the political secretary of the Government of India exercises vast powers over the Indian States. Without being a member of the Government of India, he practically discharges all the functions of a member, for there is no separate member in charge of the political portfolio, the political department being supposed to be in the direct charge of the Governor-General. The present position is that if the political department gives any decision against an Indian State or an Indian ruler, the only remedy available against it is 'an appeal, under certain conditions and subject to certain limitations, to the Secretary of State'. We are aware that in the present circumstances this is supposed to be a valued right, but this is probably due to the very unsatisfactory procedure followed in the first instance in India. It is obvious that a right of appeal in a case which is not fairly tried is of little value and we think that it is possible to replace it by adequate constitutional provisions for the future.

In ordinary experience, the matters in regard to which the Indian States come into contact or conflict with the Government of India are those relating to customs, excise, extradition, railways, post offices, and ports or harbours. In addition to this, there is the bigger common interest of self-defence. It is not necessary for us to examine what are understood to be the grievances of the Indian States in regard to these matters. We simply note the fact that responsible

Indian rulers and ministers of Indian States have, at times, raised their voice against what they have described to be the inequitable treatment which they received at the hands of the Government of India. How far those grievances are capable of being remedied, and how best they can be remedied, are matters for investigation and joint consultation, but we venture to think that their solution is not inextricably mixed up with the continuance of the present constitution of the Government of India, or the establishment of an entirely separate and independent machinery for the exclusive treatment of these subjects. If we refrain from going into this question at greater length, it is only because the public have not hitherto been permitted to know enough of the scheme which has been in the course of incubation during the last few months. But if it is permissible to us to draw our own inferences from such statements as have been made in this connection by Sir Leslie Scott, the counsel for the Indian princes, before his departure for England, we shall sound a note of warning against the attempt that is being made to duplicate the machinery, by bringing into existence a separate Council for the Indian States to work with the Governor-General. Apart from the fact that it will be a cumbersome thing, its separate existence cannot secure the solution of matters of conflict with British India or with the future Commonwealth government. It strikes us as being a vicious extension of the system of diarchy with all its attendant incongruities, inconveniences, and constitutional difficulties.

A federation of some sort was foreshadowed by Sir Malcolm Hailey, in the speech to which we have already referred, and there is no doubt that some such idea is also present to the mind of Sir Leslie Scott. But if the constitution of India is to be a federal one, as we think it might well be, the position of the Indian States in relation to that federation appears to us to call for a definite determination and the ideas, on the subject, require to be cleared up. Are the Indian States willing and ready to join a real federation? We put this question as we believe that the lines on which the princes and Sir Leslie Scott are working cannot lead to any kind of federation in its well understood sense. 'A



federal state', says professor Newton, 'is a perpetual union of several sovereign states, based first upon a treaty between those states, or upon some historical status common to them all, and secondly, upon a federal constitution accepted by their citizens. The central government acts not only upon the associated states but also directly upon their citizens. Both the internal and external sovereignty of the states is impaired and the federal union in most cases alone enters into international relations'. It would be, in our opinion, a most one sided arrangement if the Indian States desire to join the federation, so as to influence by their votes and otherwise, the policy and legislation of the Indian Legislature, without submitting themselves to common legislation passed by it. It would be a travesty of the federal idea. If the Indian States would be willing to join such a federation, after realizing the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges. But it must be clearly borne in mind that it would necessitate, perhaps in varying degrees, a modification of the system of government and administration prevailing within their territories. We hope and trust that in the light of experience gained the Indian States may make up their mind to join formally the federation. Meanwhile, we think that it is by no means impracticable to provide suitable machinery for the settlement of mutual differences on administrative and other matters. The practical question of the preservation of their treaty rights and such independence as they have enjoyed or as they claim, is, in our opinion, far more important than the arid and academic discussion of the question, whether in theory their relations are with the Government of India or with the Crown.

Accordingly, we have provided (a) 'all treaties made between the East India Company and the Indian States and all such subsequent treaties, so far as they are in force at the commencement of this Act, shall be binding on the Commonwealth. (b) The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States as the Government of

Our recommendations

India exercised and discharged previous to the passing of this Act". We have made these suggestions in no spirit of vanity or idealism. We fully realise their implications and the obligations that such provisions will impose upon the future Government of India. We do believe that the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges, or sentiments. Similarly, in regard to matters of a justiciable character, we have suggested that 'in case of difference between the Commonwealth and an Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision'. We think that this will be a far better method of settling such matters than the present arrangement under which the Government of India is both a party and a judge in a controversy between itself and an Indian State. We need scarcely point out that we anticipate that the judges of the Supreme Court will be men of the highest legal training, character, and judicial independence.

In regard to non-justiciable matters involving financial and administrative relations, it should not be difficult to come to a settlement by mutual conferences and understandings. The position, in the future, will not to our mind, be worse than it is. Indeed it is likely to be better, where, between different States, there are honest differences and an independent effort is made to arrive at just and equitable settlements. Practical good will and larger common interest are of far greater value than any meticulous considerations of ultimate sanctions. It is obvious to our mind, that the question of common defence is one which is bound to be in future the rallying centre of the Government of India and the Indian States, and if it has been possible in the past to sustain common obligations and to keep alive a common sense of duty to the country at large, we do not despair of the future.

In making these observations we feel that we have not had the advantage of discussion with the represen-

tatives of the Indian princes, and we are alive to the possibility of much greater light being thrown on some dark corners of the entire problem by such discussions. Meanwhile, we content ourselves by saying that while we recognise that an Indian federation, compatible as it will be with the maximum degree of autonomy in the local units, whether provinces or States, can be the only solid foundation for responsible government, we are not prepared to concede that until Indian States have made up their minds to join this federation in the most formal manner, British India must be denied full responsible government or dominion status, merely because it is supposed that the obligations which the Crown or the present Government of India owe to the Indian States, can be discharged only by a central government which is, and must for that reason continue to be undemocratic. Such an argument can only mean that the Indian States, while professing their sympathy with progress in British India, must effectually defeat our aims and aspirations by an attitude based not on enlightened self-interest, but on practical hostility to our aims and aspirations.

While however the Indian princes have not given us the benefit of mutual consultations and discussions, their subjects have been represented before the All Parties Conference and have put forward their case with ability. The recommendations made by the first committee of the Conference in regard to the Indian States have been severely criticised by Mr. Hosakoppa Krishna Rao, member of the Mysore Representative Assembly, who has also prepared a "Swaraj Constitution" which has been approved by a committee appointed by the All India States Subjects Conference, Madras. We have carefully considered these criticisms and the draft Swaraj constitution of Mr. Krishna Rao. But we regret that in view of the constitutional position we have discussed above we are unable at present to recommend a detailed constitution which would embrace both British India and the Indian States.

It is well-known that the expression "Indian States" does not connote any particular form of government. The authors of the report on Constitutional Reforms have thus described these States:

"They are in all stages of development, patriarchal, feudal or more advanced while in a few States are found the beginnings of representative institutions. The characteristic features of all of them however including the most advanced are the personal rule of the prince and his control over legislation and the administration of justice".

So long as this characteristic feature of personal rule does not undergo a material change the expression "Indian State" must be taken to mean "the individual ruling prince of the State concerned" and has no reference to the nature of the administration. This material change cannot be effected constitutionally without the consent of the rulers of the States who alone represent their governments. Mr. Rao says that "tradition, convention, sentiment and above all an intense feeling of loyalty too deep to be rooted out and finally, a keen desire to preserve the individuality of their respective States firmly bind them (the people of the States) to the Ruling Houses. Consequently they do not hanker after unity but desire only union with British India". With all this tradition, convention, sentiment and intense loyalty to the rulers, Mr. Rao completely ignores their wishes, abolishes all treaties and arrangements between them and "His Majesty or the Parliament of the United Kingdom or the King in Council or the Secretary of State for India or the Governor-General in Council or all the said authorities" and declares by one sweep of the pen that such treaties or arrangements shall become null and void at the date of the commencement of the constitution. He then guarantees to the States "territorial integrity, internal autonomy and stability of constitutions and the fundamental rights of their people", subject to conditions which have never been accepted by them. He provides for the withdrawal of the guarantee in case the States fail to fulfil the conditions laid down by him. We are not told what is to happen if the rulers of the States do not accept either the guarantee or the conditions attached to it and what are the "necessary measures" which Mr. Rao proposes to take against them if they fail to fulfil his conditions. As regard the form of government it is to be "hereditary monarchy, *i.e.*, a government in which the head of the State shall be the hereditary governor or administrator with a popular Assembly and an executive responsible to that

Assembly". He ends with a reservation of the "right of the people of the Confederation to claim the fullest national independence (that is, an unqualified divorce of her political, economic and social relationship from Great Britain and the British Commonwealth of Nations) and evolve her future constitution on a full-fledged federal republican basis, in case no settlement is agreed to by the British and the Indian Governments on the basis of this Constitution".

It is hardly necessary to point out the inconsistencies of these provisions or to criticise them on constitutional grounds beyond which we have not permitted ourselves to go for reasons already stated.

We have hitherto dealt with the relations of the Government of India with the Indian States. We now propose briefly to advert to the relations of the Government of India with foreign states. In one sense we are aware that the position of India as compared to some of the dominions is peculiar. India has got a vast land frontier on the North-West and the North-East, and it has to come into contact with foreign powers and semi-independent tribes. The foreign department of the Government of India is practically in charge of the foreign secretary who works directly under the Governor-General. His duties are multifarious; he has to look after the North-West Frontier provinces, he is in control of the affairs of the tribes in the 'Agency-Tracts', he has to deal with semi-independent chiefs in the North-West Province and elsewhere. His jurisdiction extends in some matters to the Persian Gulf and Aden. Some matters—not all—falling within his jurisdiction occasionally come up for discussion in the legislature and then he has to defend or explain the policy of the Government of India. The bigger questions of policy, having an imperial aspect, are settled not in India, but in England, and we realise that in a well-knit Commonwealth of Nations it is inevitable that, consistently with the independence of the dominions, there must be to some extent at least uniformity of foreign policy, but this is in the case of the dominions achieved more by mutual discussion and understandings than by any imperial mandates. Indeed the measure of freedom in regard to questions of foreign policy which in

recent years has been claimed and enjoyed by Canada, South Africa and Australia has been steadily increasing, though this has not tended to weaken the safety of the empire, or to affect the possibility of a unity of policy in larger questions of relations with foreign countries or states.

In point of fact the Government of India discharge and enforce those obligations which mutually exist between his Majesty's government and some neighbouring foreign Asiatic powers. We do not see any reason why the self-governing dominion of India should do anything less.

We are aware of the delicate nature of questions of foreign policy, and the inexpediency of discussing them at times on the floor of the legislature. We cannot see why the legislature of the dominion of India should not observe those rules of prudence and discretion which are observed in other legislatures.

## CHAPTER VI

### OTHER PROPOSALS

We shall now consider the main provisions of the constitution, as suggested by us. These are framed as has already been stated, on the model of the dominions.

The resolution of the Madras Congress lays down that the basis of the constitution must be a Declaration of Fundamental Rights. Considerable stress has been laid on this and all the draft constitutions we have considered have formulated such a declaration. Canada, Australia, and South Africa have no declaration of rights in their constitutions but there are various articles to be found in the constitution of the Irish Free State which may properly be grouped under the general head "fundamental rights". The reason for this is not far to seek. Ireland is the only country where the conditions obtaining before the treaty were the nearest approach to those we have in India. The first concern of the people of Ireland was, as indeed it is of the people of India to-day, to secure fundamental rights that have been denied to them. The other dominions had their rise from earlier British settlements which were supposed to have carried the law of England with them. Ireland was taken and kept under the rule of England against her own will and the acquisition of dominion status by her became a matter of treaty between the two nations. We conceive that the constitutional position in India is very much the same. That India is a dependency of Great Britain cannot be denied. That position can only be altered in one of two ways—force or mutual consent. It is the latter in furtherance of which we are called upon to recommend the principles of a constitution for India. In doing so it is obvious that our first

care should be to have our fundamental rights guaranteed in a manner which will not permit their withdrawal under any circumstances. With perhaps less reason than we have most of the more modern constitutions of Europe have specific provisions to secure such rights to the people.

Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than by including them among the basic principles of the constitution.

A reference to the various clauses of the declaration of fundamental rights as adopted by us will show that we have kept both these aspects in view.

The first committee of the All Parties Conference went into this question carefully and we have adopted most of their articles. We have added to the declaration an independent recommendation regarding the rights of labour and peasantry, made by the first committee, with the exception that "Parliament shall make laws to ensure fair rent and fixity of tenure to agricultural tenants". We have left this out not because we do not approve of fixity of tenure but because we felt that if this was made a fundamental right it might become more of hinderance and obstruction in the way of the tenantry, preventing future progress, than a safeguard. The present system of land tenure in large parts of India is anything but desirable and requires radical change. We recognise that the present condition of the tenantry is very deplorable and even some fixity of tenure would bring great relief. But it would be a shortsighted policy indeed if to gain some relief now we were to barter away the future rights of the peasantry. So long as the present system endures the rights of the tenants might be safeguarded by the article in the Declaration of Rights requiring Parliament, *i. e.*, the Parliament of India, to make suitable laws for securing a living wage for every worker.



We have added an article to the Declaration dealing with the right of all citizens to access to, and use of, public roads, public wells, and all other places of public resort. This may be considered obvious enough but in view of the peculiar circumstances and the customs prevailing in some parts of the country we feel that it is desirable to lay emphasis on it.

**Right to use of roads etc.**  
Certain changes and additions have also been made in some other articles. In the article dealing with the right to free elementary education we have added that there will be no "distinction of caste or creed in the matter of admission into any educational institutions maintained or aided by the state".

**No distinctions of caste in schools**  
To the right to a writ of habeas corpus we have added that in case the central legislature is not sitting during a war or rebellion the executive authority of the Commonwealth will be entitled to suspend the right for the time being but the central legislature must be informed at the earliest opportunity for such action as it may deem fit.

**Habeas Corpus**  
At the request of our colleague Sardar Mangal Singh we have added a note to the Declaration acknowledging the right of the Sikhs to carry kripans on any occasion.

**Kripans**  
We are of opinion that the central legislature should be bi-cameral, consisting of a Senate and a House of Representatives. The provincial legislatures should, in our opinion, be uni-cameral.

**The Legislature**  
For the Senate we recommend 200 members; for the House of Representatives 500 members, with provision to increase the number, if necessary, on an uniform population basis. In the provinces, as a general rule, there should be one member for every 100,000 population. But in a province with a population of less than 10 millions there may be a maximum of 100 members.

**Number of members**  
For the House of Representatives and the provincial councils we are of opinion that the largest possible franchise should be

**Franchise**

granted. Some of us were strongly in favour of adult suffrage, but others, while favouring adult suffrage as the objective to be aimed at, were of opinion that there would be too many practical difficulties in the way at the beginning. Various proposals were considered among them being, besides adult suffrage, the following:

(i) Adult suffrage subject to registration by intending voters.

(ii) The extension of the franchise from the present six millions to about 60 millions leaving it to a committee to determine the franchise which would give this result.

(iii) Any of the following

(a) All persons who may pay any revenue, rent or land or house rates, cesses and taxes.

(b) All literates.

(c) All persons who earn their livelihood by manual or intellectual labour.

(d) All such unemployed as are on the state register of the unemployed.

(e) Members of joint families.

(f) Wives of male electors.

The third proposal given above would in practice amount to something very near adult suffrage. Some of us were inclined to favour the second proposal, which increased the votes to 60 millions, as a stepping stone to adult suffrage. Adult suffrage would probably give us about 120 millions of voters in British India, and the second proposal would thus enfranchise half of these and would be a great step in advance. There were difficulties however in the way of this proposal. At present the voting ratio between different communities is not the same as the population ratio. Thus in the Punjab although the Muslims outnumber the Hindus and Sikhs combined the number of their votes is far less than the Hindu and Sikh voters. This is due to the superior economic position of the latter. We are strongly of opinion that this anomaly should be ended and the voting ratio should be made to correspond with the population ratio. With adult suffrage this happens auto-

matically, but with any other restricted franchise the only possible way to do it is to have different electoral qualifications for different groups and communities. Thus the basis of representation of different communities cannot be uniform and this may be considered a grievance by some groups. We were thus driven to the conclusion that the only solution is adult suffrage and we have recommended accordingly. We find that the Ceylon Reform Commission has come to the same conclusion. It has recommended a universal manhood suffrage with a restricted franchise for women over 30 years of age. The restriction has been imposed "in view of the necessity for keeping the number of votes within reasonable bounds". We see no such necessity. Any artificial restriction on the right to vote in a democratic constitution is an unwarranted restriction on democracy itself. It is quite a different thing to say that a system of universal adult suffrage is difficult to work. But the difficulty howsoever great has to be faced if what is contemplated is full responsible government in its true sense and with all its implications. The Ceylon Reform Commission have created a novel form of government which has no parallel in the constitutions of the world. But whatever else it may be, it certainly is not responsible government in any sense, and it is responsible government alone with which we are concerned. We do not therefore propose to put any restriction on the right of women to vote which does not equally apply to men.

Universal adult suffrage is at present being successfully worked on a small scale in the elections to the Shromani Gurdwara Prabandhak Committee (Central Sikh Shrines Committee), which are held all over the Punjab. Its introduction on a larger scale only means a multiplication of the machinery employed. We do not see why such multiplication with all the trouble and expense it involves should be considered unreasonable when it is necessary for the purpose of laying the foundation upon which responsible government rests.

We attach no weight to the objections based on the prevailing illiteracy of the masses and their lack of political experience. The proportion of literacy being very small the same objections will apply to the great



degree of intelligence, there is some chance that the right kind of men may be chosen, men who may not care to face the shouting and the tub-thumping which a modern democratic election with a wide electorate involves. Their electorate although restricted will not be based on status or vested interests or class. It will presumably reflect the temper of the mass electorates in the country. There will be a greater chance of minority and other special interests to be represented, specially, as we recommend, if the election for the Senate takes place by the system of proportional representation.

There will be another advantage in the adoption of this proposal. Provinces as such will be directly represented in the central legislature and provincial view points will be expressed in the Senate. This is specially desirable to co-ordinate the provincial legislatures with the central legislature and to promote the harmonious working of the constitution.

We have suggested that a specific number of seats should be allotted to each province, the basis being population, subject to a minimum. We have not fixed a minimum. Our idea is that although the rough population test should be applied in the allotment of seats, it should not be adhered to in its entirety, so that even the smaller provinces may have adequate representation. In some countries, like the United States of America, the constituent states of the Union send the same number of members to the Senate, regardless of population. In view of the great difference in size and population of our provinces this principle of equal representation of all provinces may not be desirable but the differences between the representation of one province and another in the Senate should not be wholly disproportionate.

We have suggested that the House of Representatives should continue for five years and the Senate for seven years.

We have adopted many of the recommendations of the first committee but we have added to them and made several changes. We have not provided for concurrent powers in any subject of both the central and provincial legis-

lature. This is likely to lead to friction, and so we have endeavoured to place the functions of the two in entirely separate compartments with no overlapping.

The other provisions relating to legislatures are on the lines of the dominion acts. In the case of the central legislature, the House of Representatives has been given sole power to deal with money bills.

We have recommended that the executive council of the Commonwealth should consist of a Prime Minister and not more than six ministers. There will probably be a tendency to increase the number of ministers so as to give representation to various communities. We do not approve of this, and in view of the provincial autonomy we are providing for, we feel that seven ministers ought to suffice in the central executive. The executive council will of course be collectively responsible to the legislature.

For the provincial executive we have suggested five ministers—a Chief Minister and four others.

The powers of the central and provincial executives are similar to those found in the dominion constitutions.

We have provided for a Supreme Court, besides the High Courts, and we suggest that ordinarily no appeals should go to the King in Council except under certain conditions, which we have specified.

We draw particular attention to the cases falling under the original jurisdiction of the Supreme Court. The most important of these are matters arising out of treaties, engagements, sanads, and similar other documents between the Commonwealth and Indian States which may be referred by the Governor-General in Council with the consent of the State concerned to the Supreme Court for its decision.

The division of the revenues of the country between the central and provincial governments, and the assignment of money for defence, education and other essential matters, will be difficult and will require the greatest care.

We have recommended that immediately after the establishment of the Commonwealth Commission of Enquiry a commission be appointed to institute an enquiry into

1. The sources of revenue which may be assigned to the Commonwealth and to the provinces, and

2. The financial relations between the central and the provincial governments.

In making the recommendation we have followed the constitution of the Union of South Africa, section 118, as the most suitable.

We have laid an additional duty on this commission to appoint

(i) a special committee to examine the whole question of the training of officers for the land, naval and air forces, and the establishment of schools and colleges to give this training.

(ii) Another committee to investigate and report on the introduction of general primary education, and the grant of special educational facilities to backward classes.

(iii) Such other committees as it may consider necessary.

We feel that the commission we have recommended will not be in a position to make a comprehensive report without the help of these committees which will be composed mostly of experts.

We have recommended that on the establishment of the Commonwealth permanent Public Services Commission should also be appointed.

One of the first duties of the Commonwealth on its establishment will be the reorganisation and readjustment of the departments of public services. It is notorious that the Indian administration to-day is top heavy and the services are paid at a higher rate than anywhere else in the world inspite of the grinding poverty of the country. The first problem before the dominion of India will be how to find money for defence, education, industry, sanitation and a host of other purposes. We cannot

possibly afford to keep extravagantly paid civil or military services and we must try to reduce the over head charges of administration to find money for developing the country. The people, or rather the articulate section of them, have all along protested against the heavy salaries of our officials. But the only answer to these protests came in the shape of the Lee Commission. This commission as is well-known was appointed in the teeth of unanimous Indian opposition and its recommendations were adopted over the head of the Indian legislature. We feel therefore that the entire question of the sources and methods of recruitment of the services, their salaries, emoluments, pensions and allowances in the future will require re-examination in the light of the new political conditions which will be created under the new constitution. For this we have provided for the appointment of a special Public Service Commission which will cease to function after the reorganisation and readjustment of the services have been effected. But we have provided adequate guarantees for persons holding offices at the establishment of the Commonwealth both in case of their electing to retire and to remain in the service of the Commonwealth. We have given three years for the exercise of the option to retire on the same terms and conditions which may be applicable to those officers at the commencement of the Commonwealth.

We have made similar provisions for all officers serving in the army, the navy, the Royal Indian Marine and in the Air Force of India serving in India at the commencement of the new constitution.

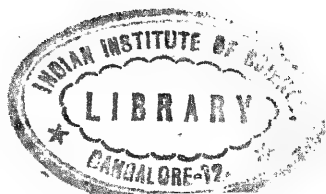
We have suggested the appointment of a Committee of Defence consisting of :

- (1) Prime Minister
- (2) Minister of Defence
- (3) Minister of Foreign Affairs
- (4) The Commander-in-Chief
- (5) The Commander of Air Forces
- (6) The Commander of Naval Forces
- (7) The Chief of the General Staff, and
- (8-9) Two other experts



The functions of this committee will be to advise the government upon questions of general policy and as to the practicability and means of effecting retrenchments in the expenditure on defence compatibly with the safety of India. We have also suggested that the annual estimates should be framed according to the recommendations of this committee. These provisions will, we believe, ensure the efficiency and general administration of the army.

For other recommendations we refer to Chapter VII, where they are set out in detail.



## CHAPTER VII

### THE RECOMMENDATIONS

We have made no attempt to draft the constitution as a whole, with the precision necessary in the case of a bill intended to be introduced in the legislature. Our recommendations have by their very nature taken a form similar to that of clauses of a draft bill but they are not intended to be treated as such or understood as anything more than an indication of the principles involved, which was all we were called upon to do by our terms of reference. It will be for the Parliamentary draftsmen to put them into shape, add formal and consequential provisions, and such details as we have omitted. It may be mentioned that some of the drafts placed before us provide for transfer orders and orders in Council to give effect to the constitution. These are very important, but more for the draftsmen than for us. On some points we have gone into greater detail than on others. But this is more or less accidental. We have drawn freely on the constitutions of the dominions as well as on Dr Besant's Commonwealth of India Bill and the drafts prepared by Messrs. Vijayaraghavachariar, Srinivasa Iyengar and Rangaswami Iyengar, and the committee of the Independent Labour Party, and also on the Government of India Act, but have found necessary in most cases to make some verbal and at times more important alterations. We have also omitted the preamble and the definitions excepting the definition of "citizen" which was settled by the first committee appointed by the All Parties Conference. We now give these recommendations under suitable headings :

#### *Constitutional status of India*

1. India shall have the same constitutional status in the comity of nations known as the British Empire,

as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having powers to make laws for the peace, order and good government of India, and an executive responsible to that Parliament, and shall be styled and known as the Commonwealth of India.

### *Operation of the constitution and laws*

2. This Act and all laws made by the Parliament of the Commonwealth thereunder shall be binding on the courts and people of every province, and of every part of the Commonwealth, notwithstanding anything in the laws of the Indian Legislature or of any province or in any Act of the United Kingdom extending to British India; and the laws of the Commonwealth shall be enforced in all Indian territorial waters.

### *Definition of citizen*

3. The word "citizen" wherever it occurs in this constitution means every person

(a) who was born, or whose father was either born or naturalised, within the territorial limits of the Commonwealth and has not been naturalised as a citizen of any other country;

(b) who is naturalised in the Commonwealth under the law in force for the time being.

Explanation:—No person who is a citizen of a foreign country can be a citizen of the Commonwealth unless he renounces the citizenship of such foreign country in the manner prescribed by law.

### *Fundamental Rights*

4. (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in accord with, this constitution.

(ii) No person shall be deprived of his liberty nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law.

(iii) Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.

(iv) The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.

(v) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state, and such right shall be enforceable as soon as due arrangements shall have been made by competent authority.

(vi) All citizens are equal before the law and possess equal civic rights.

(vii) There shall be no penal law whether substantive or procedural of a discriminative nature.

(viii) No person shall be punished for any act which was not punishable under the law at the time it was committed.

(ix) No corporal punishment or other punishment involving torture of any kind shall be lawful.

(x) Every citizen shall have the right to a writ of *habeas corpus*. Such right may be suspended in case of war or rebellion by an Act of the central legislature or, if the legislature is not in session, by the Governor-General in Council, and in such case he shall report the suspension to the legislature at the earliest possible opportunity for such action as it may deem fit.

(xi) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.

(xii) No person attending any school, receiving state aid or other public money shall be compelled to attend the religious instruction that may be given in the school.

(xiii) No person shall by reason of his religion,

caste or creed be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling.

(xiv) All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.

(xv) Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and of all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

(xvi) No breach of contract of service or abetment thereof shall be made a criminal offence.

(xvii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment.

(xviii) Every citizen shall have the right to keep and bear arms in accordance with regulations made in that behalf.

(xix) Men and women shall have equal rights as citizens.

*Note :* Notwithstanding anything to the contrary in article IV the Sikhs are entitled to carry kripans.

### *Parliament*

5. The legislative power of the Commonwealth shall be vested in a Parliament which shall consist of the King, a Senate and a House of Representatives herein called the Parliament.

6. The Governor-General shall be appointed by the King and shall have, and may exercise in the Commonwealth, during the King's pleasure, but subject to this constitution, such powers and functions of the King as his Majesty may assign to him.

7. (a) There shall be payable to the King out of the revenues of India for the salary of the Governor-General an annual sum . . . . . which, until the Parliament of the Commonwealth otherwise provides, shall be as in the schedule hereof provided.

(b) The salary of a Governor-General shall not be altered during his continuance in office.

8. The Senate shall consist of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each province on the basis of population, subject to a minimum. The election shall be held by the method of proportional representation with the single transferable vote. (The Hare system).

9. The House of Representatives shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex who has attained the age of 21, and is not disqualified by law, shall be entitled to vote.

Provided that Parliament shall have the power to increase the number of members from time to time if necessary.

10. (1) Every House of Representatives shall continue for five years from its first meeting and every Senate shall continue for seven years.

Provided that—

(a) either chamber of the legislature may be sooner dissolved by the Governor-General ; and

(b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit ; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months after the date of dissolution for the next session of that chamber.

(2) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(3) Any meeting of either chamber of the Indian legislature may be adjourned by the person presiding.

(4) All questions in either chamber shall be determined by a majority of votes of members present, other than the presiding member, who shall, however, have and exercise a casting vote in the case of an equality of votes.

(5) The powers of either chamber of the Indian legislature may be exercised notwithstanding any vacancy in the chamber.

11. There shall be a president of each House of Parliament who shall be a member of the House and shall be elected by the House. There shall also be a deputy president of each House who shall also be a member of the House and be similarly elected.

12. The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Representatives and by the members thereof respectively shall be such as are from time to time defined by Act of Parliament of the Commonwealth.

13. Parliament shall, subject to the provisions of this constitution, have power to make laws

(a) for the peace, order and good government of the Commonwealth in relation to all matters not coming in the classes of subjects by this Act assigned to the legislatures of provinces ;

(b) for the nationals and servants of the Commonwealth within other parts of India as well as those without and beyond India ;

(c) for the government officers, soldiers, airmen and followers in his Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act ; and

(d) for all persons employed or serving in or belonging to the Royal Indian Marine Service or the Indian Navy.

For greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that notwithstanding anything in this Act the legislative authority of the Parliament of the

Commonwealth extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule I, attached hereto.

14. The powers of Parliament with respect to foreign affairs, not including the Indian States, shall be the same as exercised by the self-governing dominions.

15. Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian legislature, and as to the persons to preside at the meetings of the House of Representatives in the absence of the president and the deputy president ; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

16. (i) Any bill which appropriates revenue or monies for the ordinary annual services of the Commonwealth government shall deal only with such appropriations.

(ii) Bills imposing taxation shall deal only with the imposition of taxes, and any provision therein dealing with any other matter shall be of no effect.

(iii) Bills affecting the public debt or for the appropriation of revenues or monies or for imposing taxation shall be introduced only by a member of the executive council and can only originate in the House of Representatives.

17. A money bill means a bill which contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation ; the imposition for the payment of debt or other financial purposes of charges on public revenues or monies, or the variation or repeal of any such charges ; supply, the appropriation, receipt, custody, issue or audit of accounts of public money ; the raising of any loan or the repayment thereof ; or subordinate matters incidental to those subjects or any of them. In this definition the expression "taxation", "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.



18. The question whether a bill is or is not a money bill will be decided by the president of the House of Representatives.

19. A money bill passed by the House of Representatives shall be sent to the Senate for its recommendations and it shall be returned not later than.....days therefrom to the House of Representatives, which may pass it, accepting or rejecting all or any of the recommendations of the Senate ; and the bill so passed shall be deemed to have been passed by both chambers.

20. (i) Subject to the provisions of this Act, a bill may be initiated in either House of Parliament and, if passed by the originating House, shall be introduced in the other House for being passed.

(ii) Except as otherwise provided under this Act, a bill shall not be deemed to have been passed by Parliament unless it has been agreed to by both Houses, either without amendments or with such amendments only as may be agreed to by both Houses.

(iii) If any bill which has been passed by the House of Representatives is not, within six months after the passage of the bill by that House, passed by the Senate, either without amendments or with such amendments as may be agreed to by both Houses, the Governor-General shall, on resolution passed by either House to that effect, refer the matter for decision to a joint sitting of both Houses. The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Representatives and upon amendments if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and the House of Representatives present at such sitting, shall be taken to have been duly passed by both Houses of Parliament.

21. (i) So soon as any bill shall have been passed, or deemed to have been passed by both Houses, it shall be presented to the Governor-General for the signification by him, in the King's name, of the King's assent, and the Governor-General may signify such assent or withhold the same or he may reserve the bill

for the signification of the King's pleasure.

(ii) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signifies his assent thereto in the King's name, or in the case of a bill reserved for the signification of the King's pleasure, until he signifies by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council.

Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signification by him of the King's assent, or has been reserved by him for the signification of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(iii) Any bill so returned shall be further considered by Parliament together with the amendments, recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signification in the King's name of the King's assent.

### *The Commonwealth Executive*

22. The executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative, acting on the advice of the executive council, subject to the provisions of this Act and of the laws of the Commonwealth.

23. (a) There shall be an executive council consisting of the Prime Minister and, until Parliament otherwise provides, not more than six ministers of the Commonwealth.

(b) The Prime Minister shall be appointed by the Governor-General and the ministers shall also be appointed by him on the advice of the Prime Minister.

(c) The executive council shall be collectively responsible to the legislature for all matters concerning the departments of the Commonwealth administered by members of the executive council.

24. Until Parliament otherwise provides, the appointment and removal of all other officers of the executive government of the Commonwealth shall be

vested in the Governor-General in Council, unless the appointment is delegated by the Governor-General in Council, or by a law of the Commonwealth to some other authority.

25. The Command-in-chief of the military, naval and air forces of the Commonwealth is vested in the Governor-General as the King's representative.

#### *High Commissioner and Foreign Representatives*

26. The Commonwealth shall have the power to appoint High Commissioners and other foreign representatives similar to that exercised by Canada and other dominions. Such appointment shall be made by the Governor-General in Council who shall also make provision by rules for his pay, powers, duties and conditions of employment.

#### *Financial control*

27. (1) The Auditor General in India shall be appointed by the Governor-General in Council who shall by rules make provision for his pay, powers, duties and conditions of employment, or for the discharge of his duties in the case of a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Governor-General in Council no office may be added to or withdrawn from the public service and the emoluments of no posts may be varied except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Commonwealth according as it is or is not under the control of a local government.

#### *The Provincial Legislature*

28. The legislative power of a province shall be vested in the King and the local legislative council.

29. There shall be a Governor of every province who shall be appointed by the King and represent his Majesty in the province.

30. There shall be payable to the King out of the revenues of the province for the salary of the Governor an annual sum of . . . . . which, until Parliament of the Commonwealth otherwise provides shall be as in schedule . . . . . hereof provided.

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province, provided that in provinces with a population of less than ten millions there may be a maximum of 100 members.

(ii) Every member shall be elected by a constituency determined by law. Every person of either sex who has attained the age of 21 and is not disqualified by law shall be entitled to vote.

32. (i) Every Provincial Council shall continue for 5 years from its first sitting provided that—

- (a) it may be sooner dissolved by the Governor;
- (b) the term of 5 years may be extended by the Governor if in special circumstances he so thinks fit;

- (c) after the dissolution of the Council the Governor shall appoint a date not more than 6 months after the date of the dissolution for the next session of the Council.

- (ii) The Governor may appoint such times and places for holding the sessions of the Council as he thinks fit and may also from time to time, by notification or otherwise, prorogue such sessions.

- (iii) Any meeting of the Council may be adjourned by the person presiding.

- (iv) All questions in the Council shall be determined by the majority of votes of the members present, other than the presiding member, who shall however have and exercise a casting vote in the case of an equality of votes.

- (v) The powers of the Council may be exercised notwithstanding any vacancy.

33. There shall be a president of every Council who shall be a member of the House and shall be elected by the House. There shall also be a deputy president who shall also be a member of the House and be similarly elected.

34. The local legislature of any province has power, subject to the provisions of this Act, to make

laws for the peace and good government of the territories for the time being constituting that province. The legislative authority of every provincial council extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule II, attached hereto.

35. The local legislature of any province may repeal or alter, as to that province, any law relating to a provincial subject made either before or after the commencement of this Act by any authority in British India.

36. Any measure affecting the public revenues of a province, or imposing any charge on the revenue, shall be introduced only by a member of the executive council of the Governor.

37. When a bill has been passed by a local legislative council, the Governor may declare that he assents to or withholds his assent from the bill.

38. If the Governor withholds his assent from any such bill the bill shall not become an Act.

39. If the Governor assents to any such bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the Governor.

40. Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

41. When an Act has been assented to by the Governor-General it shall be lawful for his Majesty in Council to signify his disallowance of the Act.

42. Where the disallowance of an Act has been so signified, the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification, shall become void accordingly.

### *The Provincial Executive*

43. The executive power of the province shall be vested in the Governor acting on the advice of the provincial executive council.

44. There shall be an executive council for every

province consisting of not more than five ministers appointed by the Governor.

45. In appointing the executive council the Governor shall select the Chief Minister and appoint others only on his advice.

### *The Judiciary.*

46. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Lord President, and so many other Justices, as Parliament may fix.

47. The Lord President of the Commonwealth, and all other Judges of the Supreme Court of the Commonwealth to be appointed after the establishment of the Commonwealth, shall be appointed by the Governor-General in Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be diminished during their continuance in office.

48. The Lord President of the Commonwealth and other judges of the Supreme Court of the Commonwealth shall not be removed from office except by the Governor-General in Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

49. The Supreme Court shall have original jurisdiction in all matters—

- (i) referred to the Supreme Court by the Governor-General in Council under section 85 ;
- (ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party ;
- (iii) affecting consuls or other representatives of other countries ;
- (iv) between provinces ;
- (v) arising under this constitution or involving its interpretation.

50. The Supreme Court shall have jurisdiction, with such exceptions and subject to such regulations as Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences—

- (a) of any Justice or Justices exercising the original jurisdiction of the Supreme Court;
- (b) of the high court of any province, or of any other court of any province from which at the establishment of the Commonwealth an appeal lies to the King in Council.

51. The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed, or be capable of being reviewed by any other court, tribunal or authority whatsoever.

### *Appeals to the King in Council*

52. (i) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any province or provinces, or as to the limits *inter se* of the constitutional powers of any two or more provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(ii) The Supreme Court may so certify if satisfied that for any special reason the certificates should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(iii) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of his royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council.

### *High Courts—Constitution*

53. The high courts referred to in this Act are the high courts of judicature for the time being established in British India.

54. Each high court shall consist of a chief justice and as many other judges as the Governor-General in Council may think fit to appoint. Provided as follows:

- (i) The Governor-General in Council may appoint persons to act as additional judges

of any high court, for such period, not exceeding two years, as may be required; and the judges so appointed shall, whilst so acting, have all the powers of a judge of the high court appointed by the Governor-General in Council;

- (ii) the maximum number of judges of a high court including the chief justice and additional judges shall be 20.

55. A judge of a high court must be an advocate on the rolls of a high court of not less than ten years' standing provided that nothing herein contained shall affect the continuance of the tenure of office of the judges who may be holding appointments at the commencement of this Act.

56. (i) Every judge of a high court shall hold office during his good behaviour.

(ii) Any such judge may resign his office to the local government.

57. The chief justice and other judges of the high court shall not be removed from office except by the Governor-General in Council on an address by the Provincial Legislature.

58. (i) The Governor-General in Council may fix the salaries, allowances, furloughs, retiring pensions, and may alter them; but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(ii) The remuneration fixed for a judge under this section shall commence upon taking upon himself the execution of his office.

59. (i) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice the local government shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by the Governor-General to the office of chief justice of the court, and has entered on the discharge of his duties of that office, or until the chief justice has returned from his absence, as the case requires.



(ii) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the local government may appoint a person, with such qualifications as are required in persons to be appointed to the high court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by the Governor-General in Council to the office of judge of the court, and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the local government sees cause to cancel the appointment of the acting judge.

### *Jurisdiction*

60. (i) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court as are vested in them by letters patent, and subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(ii) The letters patent establishing, or vesting jurisdiction, powers or authority, in a high court may be amended from time to time by a further letters patent.

61. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,—

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and pro-

ceedings of such courts ;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts ;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the local government.

62. (i) Each high court may, by its own rules, provide as it thinks fit for the exercise, by one or more judges of the high court of the original and appellate jurisdiction vested in the court.

(ii) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief judge, are to constitute the several division courts.

63. The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside the Commonwealth.

64. (a) The Governor-General, each Governor, each of the members of the executive council, whether in the Commonwealth or in the provinces, shall not be subject to the original, appellate or revisional jurisdiction of any high court, by reason of anything counselled, ordered or done, by any of them, in his public capacity only.

(b) The exemption shall extend also to the chief justices and other judges of the several high courts.

65. The Governor-General in Council may, if he sees fit, by letters patent, establish a high court of judi-

cature in any territory in the Commonwealth, whether or not included within the limits of the local jurisdiction of another high court; and confer on any high court so established, any such jurisdiction, powers and authority as are vested in, or may be conferred on, any high court existing at the commencement of this Act; and where a high court is so established in any area included within the limits of the local jurisdiction of another high court, the Governor-General may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

#### *Advocate-General*

66. The local government may appoint an advocate general for each of the provinces and may, on the occurrence of a vacancy in the office of advocate general, or during any absence or deputation of an advocate general, appoint a person to act as advocate general; and the person so appointed may exercise the powers of an advocate general until some person has been appointed by the Governor-General in Council and has entered on the discharge of his duties or until the advocate general has returned from his absence or deputation, as the case may be, or until the local government cancels the local appointment.

#### *Property, Revenue and Finance*

67. All property vested in, or arising or accruing from property or rights vested in, his Majesty or the Secretary of State in Council under the Government of India Acts, 1858, 1915 and 1919 shall vest in the Governor-General in Council.

68. The revenues of India shall vest in the Governor-General in Council and shall, subject to the provisions of this Act, be applied for the purposes of the Commonwealth alone.

69. The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and in particular,—

- (1) all tributes and other payments in respect of any territories which would have been re-

ceivable by or in the name of the East India Company if the Government of India Act, 1858, had not been passed ; and

(ii) all fines and penalties incurred by the sentence or order of any court of justice in British India, and all forfeitures for crimes of any movable or immovable property in British India ; and

(iii) all movable or immovable property in British India escheating or lapsing for want of an heir or successor and all property in British India devolving as *bona vacantia* for want of a rightful owner.

70. Parliament shall establish a Railway and Harbour Fund into which shall be paid all revenues raised or received by the Governor-General in Council from the administration of railways, posts and harbours, and such fund shall be appropriated by Parliament to the purposes of railways, posts and harbours on such conditions and in such manner as it may prescribe. There shall also be formed a consolidated revenue fund into which shall be paid all other revenues raised or received by the Governor-General in Council and such fund shall be appropriated by Parliament for the purpose of the Commonwealth in the manner prescribed by this Act or by rules made in that behalf and subject to the charges imposed thereby.

71. There shall be charged on the revenues of India alone—

(a) all the debts of the East India Company ;  
and

(b) all sums of money, costs, charges and expenses which, if the Government of India Act, 1858, the Government of India Act, 1915, as amended by the Government of India Act 1919 or this Act had not been passed, would have been paid by the East India Company out of the revenues of India in respect of any treaties, conventions, contracts, grants or liabilities existing at the commencement of this Act ;  
and

(c) all expenses, debts and liabilities lawfully contracted and incurred on account of the Government of India; and

(d) all other charges and payments under this Act (except so far as is otherwise provided under this Act).

72. (i) As soon as may be after the establishment of the Commonwealth the Governor-General in Council shall appoint a Commission consisting of one representative from each province and . . . representatives of the government of the Commonwealth, and presided over by an officer of the Commonwealth, to institute an enquiry into (a) the sources of revenue which may be assigned to the government of the Commonwealth and to the governments of the provinces respectively with due regard to the efficient administration and development of the services or subjects under the respective control of either, and (b) the financial relations which should exist between the government of the Commonwealth and the governments of the provinces, and (c) for the means to be adopted for giving effect to such relations.

(ii) The said Commission shall appoint a committee to examine the whole question of the training of officers for the land, naval and air forces of the Commonwealth and the establishment of the requisite number of schools and colleges for military instruction.

(iii) The committee so appointed shall report to the Commission about the requisite number of such schools and colleges and their staffs, the places where they are to be established, and the standard of instruction to be imparted in each, and an estimate of the initial and maintenance cost of the said schools and colleges.

(iv) The said Commission shall also appoint a committee to investigate and report on the steps to be taken for the introduction of general primary education in the Commonwealth and the affording of special educational facilities for backward classes.

(v) The said Commission shall have the power to appoint such other committees as it may consider necessary, for the purposes of its inquiry.

(vi) The said Commission shall report to the Gover-

nor-General in Council on matters recommended in clause 1, and shall make special recommendations fixing minimum charges on the revenues of the Commonwealth and the provinces for the purposes mentioned in 2, 3 and 4.

73. The Governor-General in Council shall lay the entire report of the Commission together with his recommendations before Parliament for such legislative or other action as it may deem fit.

74. Pending the completion of the said enquiry, and until Parliament has taken action under clause 68, the existing sources of revenue and the financial relations shall continue to be in force.

### *Defence*

75. (a) The Governor-General in Council shall appoint a Committee of Defence consisting of (1) the Prime Minister, (2) the Minister of Defence, (3) the Minister of Foreign Affairs, (4) the Commander-in-Chief, (5) the Commander of the Air Forces, (6) the Commander of the Naval Forces, (7) the Chief of the General Staff, and two other experts.

(b) The Prime Minister shall be the chairman of the committee; and there shall be a permanent staff including a secretary attached to this committee.

(c) The functions of this committee shall be to advise the government and the various departments concerned with questions of defence and upon general questions of policy.

(d) As soon as the committee is appointed the Governor-General in Council may take the advice of the Committee of Defence as to the practicability and means of effecting a retrenchment in the expenditure on defence compatibly with the safety of India. The estimates shall be framed according to the recommendations of the committee.

176. The proposals of the Governor-General in Council for the appropriation of revenues or monies classified as "Defence", shall be submitted to the vote of the House of the Representatives.

77. Notwithstanding anything to the contrary in

the foregoing provisions, the Governor-General in Council may, in the event of any foreign aggression on India by land, air or sea, or upon his being satisfied that there is a reasonable apprehension of such aggression, authorise such expenditure as may be necessary for the safety of British India or any part thereof. Such action taken by the Governor-General shall be reported by him immediately to the legislature, if in session, or if the legislature is not in session, to a special session to be summoned as soon as possible thereafter.

78. No measure affecting the discipline or maintenance of any part of the military, naval and air forces of the Commonwealth shall be introduced in Parliament except on the recommendation of the Committee of Defence appointed under this constitution.

### *The Civil Services*

79. Subject to the provisions of the next succeeding section, all officers of the public services shall, at the establishment of the Commonwealth, become officers of the Commonwealth.

80. As soon as possible after the establishment of the Commonwealth, the Governor-General in Council shall appoint a Public Service Commission to make recommendations for such reorganisation and readjustment of the departments of the public services as may be necessary.

81. Parliament may make laws for regulating the classification of the civil services in India, the sources and methods of their recruitment, their conditions of service, pay and allowances, and discipline and conduct. Parliament may also, to such extent and in respect of such matters as it may prescribe, delegate the power of making rules under the said laws to the Governor-General in Council or to local governments.

82. (i) After the establishment of the Commonwealth the Governor-General in Council shall appoint a permanent Public Service Commission with such powers and duties relating to the recruitment, appointment discipline, retirement and superannuation of public officers as Parliament shall determine.

— (ii) Members of the permanent Public Service Com-

mission shall hold office for five years from the date of appointment.

83. Any officer of the public services who desires to retire within three years of the establishment of the Commonwealth, or is not retained in the service of the Commonwealth, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established.

#### *The Army Services*

84. All officers, British and Indian, serving in the army, the navy, the Royal Indian Marine, or the Air Force of India, serving in India at the commencement of the new constitution, shall retain all their existing rights as to salaries, allowances or pensions or shall receive such compensation for the loss of any of them, as the Governor-General in Council may consider just and equitable, or as they would have received in like circumstances if the Commonwealth had not been established.

Further all such officers, British or Indian, who were in receipt of pensions at the date of the commencement of the new constitution, shall continue to receive the same pension from the revenues of India.

#### *Indian States*

85. The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged.

In case of any difference between the Commonwealth and any Indian State on any matter arising out of treaties, engagements, sanads or similar other documents, the Governor-General in Council, may with the consent of the State concerned, refer the said matter to the Supreme Court for its decision.

#### *New provinces*

86. The redistribution of provinces should take place on a linguistic basis on the demand of the majority



of the population of the area concerned, subject to financial and administrative considerations.

### *Amendment of the Constitution*

87. Parliament may, by law, repeal or alter any of the provisions of the constitution. Provided that the bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together and at the third reading shall be agreed to by not less than two-thirds of the total number of the members of both Houses. A bill so passed at such a joint sitting shall be taken to have been duly passed by both Houses of Parliament.

*Note* :—The following are the recommendations on Communal and other controversial matters.

### *Communal representation*

I. There shall be joint mixed electorates throughout India for the House of Representative and the provincial legislatures.

II. There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.-W. F. Province. Such reservation will be in strict proportion to the Muslim population in every province where they are in a minority and in proportion to the non-Muslim population in N.-W. F. Province. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.

III. In the provinces

(a) there shall be no reservation of seats for any community in the Punjab and Bengal ;

(b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats,

(c) in the N.-W. F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

IV. Reservation of seats where allowed shall be for a fixed period of ten years.

### *Redistribution and status of provinces*

V. Sind should be separated from Bombay and constituted into a separate province after such enquiry about the financial position as may be considered necessary.

VI. Parts of Karnataka, except the small islands on the other side of the Mysore territory, should similarly be separated from the provinces in which they are at present included and formed into a single separate province.

VII. The N.-W. F. Province, and all newly formed provinces by separation from other provinces, shall have the same form of government as the other provinces in India.

MOTILAL NEHRU  
ALI IMAM  
TEJ BAHADUR SAPRU  
M. S. ANEY  
MANGAL SINGH  
SHUAIB QURESHI\*  
SUBHAS CHANDRA BOSE  
G. R. PRADHAN

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\* Mr. Shuaib Qureshi was unfortunately unable to be present at the last meeting of the Committee when the draft report was considered. The draft however was sent to him and he has informed us that in regard to the recommendations contained in chapter III he is of opinion that one third seats in the central legislature should be reserved for Muslims. Further, he says: "I agree with the resolution adopted at the informal conference of July 7th but do not subscribe to all the figures and arguments produced in its support".

Sir Ali Imam, Mr. Subhas Chandra Bose and Mr. G. R. Pradhan were also unable to be present at the final meeting of the Committee but they signified their concurrence with the report after reading the draft.

*Note on the Informal Conference and after*

The resolution of the informal conference, given on page 50 of the report, was passed on July 7th, 1928. It was signed by Dr. M. A. Ansari, Pandit Motilal Nehru, Pandit Madan Mohan Malviya, Sir Ali Imam, Sir Tej Bahadur Sapru and Messrs. Abulkalam Azad, Sachchidananda Sinha, C. Y. Chintamani, T. A. K. Sherwani, Mangal Singh, Mohammad Shafee Daudi, M. S. Aney, S. D. Kitchlew, Subhas Chandra Bose, Shuaib Qureshi, Khaliquz Zaman, D. R. Ranjit Singh, Syed Mahmud, A. M. Khwaja and Jawaharlal Nehru. Some others, who were present, agreed with this resolution but had left when signatures were taken.

This resolution was later considered by the All Parties Committee together with some non-members who had been invited. Extracts from the proceedings of the Committee are given below.

*Extract from the proceedings of the Committee,  
dated 8th July.*

Morning session.

*Present :*

Pandit Motilal Nehru.  
Mr. M. S. Aney.  
Mr. Shuaib Qureshi.  
Sardar Mangal Singh.  
Mr. Subhas Chandra Bose.

The following non-members were also present by invitation :

Dr. M. A. Ansari.  
Maulana Abulkalam Azad.  
Mr. T. A. K. Sherwani.  
Mr. Mohammad Shafi Daudi.  
Dr. S. D. Kitchlew.  
Mr. Khaliq-uz-Zaman.  
Dr. Syed Mahmud and  
Mr. Jawaharlal Nehru.

The question of reservation of seats for the Muslim minority in the central legislature was considered. It was stated however that under yesterday's agreement (first part) there could be no such reservation even for minorities. On the other hand

it was pointed out that without reservation it was probable that only about 30 or 40 Muslims may be returned to a central legislature of 500 members. This same result would be arrived at, it was shown, in the provinces where Muslims were in a small minority. A suggestion was made that this difficulty could be got over by a reservation of seats for small minorities in both central and provincial legislatures but not for majorities. This would mean a revision of yesterday's agreement. No decision was arrived at and the matter was postponed to the evening session.

July 8th.

Evening session.

Present as in morning session with the exception of Dr. S. D. Kitchlew and Dr. Syed Mahmud.

Also present Sir Tej Bahadur Sapru.

The question of minority representation left over at the morning session was then taken up. It was unanimously agreed to modify the first part of the resolution of the informal conference held on the 7th July so as to permit reservation of seats in the central legislature for minorities on population basis.

The question of reservation of seats for small minorities in the Provincial Council was then considered. The Committee, with the exception of Mr. Shuaib Qureshi, was of opinion that the reasons favouring such reservation in the central legislature apply with equal force to the provincial legislature also. This opinion was supported by non-members present. It was therefore agreed to report to the All Parties Conference that reservation of seats for small minorities in proportion to their population, with the right to contest additional seats, should be permitted in provincial legislatures.

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## SCHEDULE I

### CENTRAL SUBJECTS

1. Trade and commerce with other countries and in India and the incorporation of trading, financial or foreign corporations in India.

2. Taxation, excluding the taxation assigned under this constitution to the provinces or parts of them ; but including customs, revenue, excise, income-tax, super-tax, corporation profits tax, opium, including control of its cultivation, manufacture, and sale, export duties.

3. Bounties on the production of export of goods.

4. Borrowing money on the credit, the assets and the property of the Commonwealth ; the public debt of the Government of the Commonwealth.

5. Currency, coinage and legal tender.

6. Banking and insurance and savings banks ; the incorporation of banks and the issue of paper money and stock exchanges.

7. Bills of exchange, cheques, *hundies* and promissory notes.

8. Shipping and navigation, including shipping and navigation on such inland waterways as may be declared to be of national importance ; harbours, major ports, lighthouses, beacons, lightships, buoys.

9. Railways, and roads of all India and military importance.

10. Aircraft and all matters connected therewith.

11. Posts, telegraphs and telephones including wireless communications and installations.

12. The defence of India and all matters connected with the naval, military and air forces of the Commonwealth, including militia, Indian Marine Service and any other force raised in India other than military and armed police wholly maintained by the provincial government ; naval and military works and cantonments ; schools and colleges for military, naval and air training.

13. Foreign and external relations including relations with States in India and political charges ; domicile, naturalization and aliens ; passports ; and pilgrimages beyond India.

14. Emigration and immigration.
15. Port quarantine and marine hospitals.
16. The Commonwealth Public Services and the Commonwealth Public Service Commission.
17. The Audit department of the Commonwealth.
18. The Supreme Court of India, and legislation relating to High Courts.
19. Civil Law including laws regarding status, contract, property, civil rights and liabilities and civil procedure.
20. Criminal Law including criminal procedure and extradition laws.
21. Bankruptcy and insolvency.
22. Legislation regarding marriage, divorce and matrimonial matters, parental rights, the custody and guardianship of infants; their status and age of majority.
23. Copyright; newspapers and books; patents of inventions and designs and trade marks.
24. Land acquisition by or for the purposes of the Government of the Commonwealth.
25. Laws relating to registration of deeds and documents.
26. Laws relating to registration of births, deaths and marriages.
27. Census and statistics.
28. Control of arms and ammunition.
29. (a) Control of petroleum and explosives.  
(b) Control of poisons.
30. The standards of weights and measures.
31. Fisheries in Indian waters beyond the three miles limit.
32. Survey of India; geological survey and astronomical and meteorological observations.
33. Parliamentary elections.
34. The seat of the Government of the Commonwealth.
35. Inter-provincial matters.
36. Factory legislation.
37. Industrial matters;  
(a) Welfare of labour.  
(b) Provident fund.  
(c) Industrial Insurance—General health and accident.
38. Control of mines.

39. Medical qualifications and standards.
  40. Stores and stationery for the Commonwealth.
  41. Central publicity and intelligence department.
  42. Zoological survey ; botanical survey ; archaeology.
  43. Central agencies and institutions for research (including observatories) and for professional and technical training or promotion of special studies.
  44. Territorial changes, other than intra-provincial, and declaration of laws in connection therewith.
  45. All property of the Commonwealth.
  46. Legislation regarding forests.
  47. Legislation relating to non-judicial stamps.
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## SCHEDULE II

### PROVINCIAL SUBJECTS

1. Land revenue including assigned land revenue ; any other tax that may be imposed on land or agricultural income ; charges for water ; survey and settlement ; disposal and colonisation of public land and management of government estates.

2. Excise, that is to say, the control of manufacture, transport, possession, purchase and sale of alcoholic liquor and intoxicating drugs (except opium), and the levying of excise duties and license fees on, or in relation to, such articles and other restrictive excises.

3. All local taxation, such as tolls ; cesses on land or land values ; tax on buildings ; tax on vehicles or boats ; tax on animals ; octroi and a terminal tax on goods imported into or exported from a local area ; tax on trades, professions and callings ; tax on private market ; tax on advertisement ; tax on amusements or entertainments ; tax on gambling ; taxes imposed in return for services rendered by the local authority.

4. Land acquisition by and within the province.

5. Administration of forests and preservation of game.

6. Agriculture, including research institutes, experimental and demonstration farms, protection against destruction by insects and pests.

7. Fisheries, excluding Commonwealth fisheries.

8. Water supplies, irrigation canals, drainage and embankment, water storage and water power except where they involve a matter of inter-provincial concern or affect the relations of a province with an Indian State or any other territory.

9. Public works and undertakings within the province including buildings, roads, bridges, ferries, tunnels, ropeways, causeways, tramways, light and feeder railways, inland waterways and other means of communications except :

(a) such railways, roads and inland waterways as are central subjects.

(b) all such works as extend beyond the borders of the province.



(c) such works (although wholly situate within the province) as may be declared by Parliament to be of all India importance.

10. Co-operative societies.
11. Development of mineral resources.
12. Famine relief.
13. Pilgrimages within India.
14. Local self-government including constitution and powers of Municipal Corporations, Local Boards, Village Panchayats Improvement Trusts, Town Planning Boards and other local authorities in the province, and local fund audit.
15. Medical administration including hospitals, dispensaries, asylums, and provision for medical education.
16. Public health and sanitation and vital statistics.
17. Education, including universities and technical institutes, provincial institutions for professional or technical training and for promotion of technical studies.
18. Court of Wards and encumbered and attached estates.
19. Land improvement and agricultural loans.
20. Land tenures and landlord and tenant, rent law.
21. Administrator-General and Official Trustees subject to legislation by central legislature.
22. Development of industries, including industrial research.
23. Police, including military and armed police maintained by the province and Railway Police, subject in the case of Railway Police to such rules as may be prescribed by Parliament as to limits of jurisdiction and railway contribution to cost of maintenance.
24. Adulteration of foodstuffs and other articles.
25. (a) Control of vehicles, subject in the case of motor vehicles to legislation by the central legislature as regards licenses valid throughout India.  
(b) Control of dramatic performances and cinematographs.
26. Prisons, prisoners and reformatories and vagrancy.
27. Backward tribes and their settlements.
28. Treasure trove.
29. Administration of justice in the province including the constitution, maintenance and organisation of courts of civil and criminal jurisdiction.
30. Election for the legislature of the province.

31. Legislation imposing punishments by fine, penalty or imprisonment for breach of any law of the province in relation to any provincial matter.

32. The borrowing of money on the sole credit of the province, subject to sanction of central government; assets and property of the province.

33. Administration of the law relating to the registration of births, deaths and marriages.

34. Provincial law reports.

35. Minor ports.

36. Public libraries, except the Imperial Library at Calcutta; museums, except the Indian Museum, the Imperial War Museum and the Victoria Memorial in Calcutta; zoological and botanical gardens and registration of societies.

37. Pounds and prevention of cattle trespass.

38. Civil Veterinary Department, including provisions for veterinary training, improvement of stock and prevention of animal diseases.

39. Factories, subject to legislation by central legislature.

40. Settlement of labour disputes.

41. Gas and electricity.

42. Boilers.

43. Smoke nuisances.

44. Housing of labour.

45. Coroners.

46. Provincial stores and stationery.

47. Provincial government press.

48. Provincial services and Provincial Services Commission.

49. The seat of the provincial government.

50. Control of elections, subject to regulation by central government.

51. Fees, including court fees; probate duties; succession or estate duties.

52. Control of production, supply and distribution, subject to rules made by the central legislature.

53. Development of industries, subject to rules made by the central legislature.

54. Religious and charitable endowments, subject to legislation by central legislature.

55. Regulation of betting and gambling, subject to legislation

by the central legislature.

56. Prevention of cruelty to animals and protection of wild birds and animals subject to legislation by the central legislature.

57. Non-judicial stamps, subject to legislation by the central legislature; and judicial stamps, subject to legislation by the central legislature as regards amount of court-fees levied in relation to suits and proceedings in the high courts under their original jurisdiction.

58. Registration of deeds and documents subject to legislation by the central legislature:

59. Weights and measures subject to legislation by the central legislature as regards standards.

60. Control of poisons; arms and ammunition; petroleum and explosives; subject to legislation by the central legislature.

61. Control of newspapers, subject to legislation by the central legislature.

62. Regulation of medical and other professional qualifications and standards subject to legislation by the central legislature.

63. Local Fund Audit.

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## APPENDIX A

### An analysis of the population figures of the Punjab according to religion

*Being a note on the population figures of the Punjab with special reference  
to the probable extent of the representation of various religious  
groups in the legislature*

This note is based on the following assumptions :

1. That there is ordinary territorial representation with what are called joint or mixed electorates and without any reservation of seats.
2. That there is adult franchise, or at any rate some franchise which ensures that the numbers of electors of the various communities bear the same ratio to each other as the population figures of those communities.

The figures and calculations in these notes are based entirely on the 1921 census. It may be mentioned however that the ratio of increase of Muslims in the Punjab is slightly greater than that of Hindus. This according to the census report is not due now to conversions but to certain social causes—widow remarriage and a higher marriage age amongst the Muslims. Infantile mortality is greater amongst the Hindus owing to early marriages. Hence it is probable that the Muslim population in the Punjab today is slightly greater proportionately than is evidenced by the 1921 census figures. The next census may show this increase. This means that the calculations in these notes are conservative figures so far as the Muslims are concerned, and the actuality is more favourable to them.

It is not possible to arrive at any accurate conclusion regarding representation in legislatures on population figures from a census report. A great deal must depend on the grouping of constituencies. It is also by no means certain, and it certainly is most undesirable, that in a joint electorate a Hindu should always vote for a Hindu, and a Muslim for a Muslim. But it is not possible to make allowances for this in these calculations. As the question is being considered in its communal aspect we must presume that as a general rule votes will be cast on communal lines. The constituencies not having been formed the only alternative is to examine the figures for the individual districts. It is likely that either a whole district or a part of it will form a single constituency.

The population of the Punjab (excluding Indian States) in 1921 was 20,685,024. This was made up as follows :

Muslims	..	..	11,444,321	..	55.3%
Hindus	..	..	6,579,260	..	31.8%
Sikhs	..	..	2,294,207	..	11.1%
Others (mainly Christians)	..	..	367,236	..	1.8%
			20,685,024	100.0%	

Thus the Muslims are in a clear but not a great majority over all others combined. If the distribution of population is more closely examined it will be seen that the Muslims are in an even stronger position than the all Punjab figures might indicate. This is due to the fact that the Hindus and Sikhs are present in large numbers in the southern part of the province—Ambala and Jullundur divisions. Muslims are in a minority in these two divisions but they make up for it by increasing their majorities elsewhere.

The Punjab can be divided roughly into three natural belts or areas (1) the predominantly Muslim area, (2) the neutral area but with Muslim majority and (3) the Hindu-Sikh area. If we take the existing divisions as corresponding approximately to these areas we have the following three belts:

- I. **Rawalpindi and Multan divisions** forming the Muslim zone with Muslims in very great majorities (86.9% and 76.9% respectively)
- II. **Lahore division** forming the neutral zone, but Muslims in a majority (57.0%) over all others combined.
- III. **Ambala and Jullundur divisions** forming the Hindu-Sikh zone. Muslims are in a minority (26.3% and 32.8% respectively).

We can form some rough idea of the representation in the legislature on the basis of these communal zones. Allowing one member for every hundred thousand of population we have:

		Population in thousands	Members of legislatures	
Punjab.....	..	20,685	207	
I. {	Rawalpindi division	.. 3461	.. 35	77
	Multan division	.. 4218	.. 42	
II.	Lahore division	.. 4997	.. 50	50
III. {	Ambala division	.. 3827	.. 38	80
	Jullundur division	.. 4182	.. 42	
			207	

We may presume that the Muslims will capture all the seats in the Muslim zone and Hindu-Sikhs all the seats in the Hindu-Sikh zone. In the Lahore division there may be a division of the spoils. This of course cannot and should not happen in its entirety. It is not desirable that each division should be represented by one community only. But in making a rough calculation one may presume this much—the seats gained by the Muslims in the Hindu-Sikh area will probably be counter-balanced by the seats gained by the Hindu-Sikhs in the Muslim area.

As a matter of fact there is more chance of the Muslims gaining a seat in the Hindu-Sikh area than the reverse, as the Muslim majorities in Rawalpindi and Multan divisions are tremendous (86.0% and 76.9%).

Thus we arrive at the conclusion that the Muslims are bound to get 77 seats in their zone and the Hindu-Sikhs combined, 80 seats in their zone. The third zone—Lahore division—will probably be divided between the two, but the division is likely to be very much in favour of the Muslims. They are 57.0% of the population, the Hindus being 20.7% and the Sikhs 16.2%. Christians etc. amount to 6.1% but they may be left out of consideration here as presumably they have no special affiliations to the major communities and can certainly not be considered as being anti-Muslim or as belonging to the Hindu-Sikh bloc. Hindus and Sikhs together amount to 36.9% as against the 57.0% of the Muslims. The Muslims are thus more than one and a half times stronger than the Hindu-Sikh group. The difference is considerable and the Muslim strength must make itself felt in an election. The Muslim majority in this division should ordinarily gain more seats than it is entitled to on basis of population. But even if it got seats exactly in proportion to its population in the division, it would have 29 seats. This added to the 77 seats in the Muslim belt gives the figure 106 which gives a small but clear majority in the legislature of 207, over all other communities and groups combined. The majority will really be much greater over the Hindu-Sikh bloc as the "others" may also be in the minority.

All this proceeds on the basis that Hindu and Sikh interests are identical and the two groups hang together on all occasions. This of course is not a justifiable presumption and it is more than likely that they may not always act together. In such a contingency each community's hopeless minority in the face of the solid Muslim majority will become even more obvious.

As the Lahore division is likely to be the critical one, it may be examined in greater detail. Out of the 6 districts in this division, three districts—Sialkot, Gujranwala and Sheikhupura—have very substantial Muslim majorities. And as "others" (Christians etc.) are present in appreciable numbers in these districts the Muslim majorities *vis-a-vis* the Hindu-Sikh bloc become even greater and are really overwhelming.

The figures are:

#### Sialkot district

Muslims	..	..	61.9%	} .. 9½ seats
Hindus	..	..	19.5%	
Sikhs	..	..	8.0%	
Others	..	..	10.5%	

The Hindu-Sikh bloc totals 27.5% as against the 61.9% of the Muslims. The latter thus are considerably more than double the number of the Hindus and Sikhs combined.

#### Gujranwala district

Muslims	..	..	71.0%	} .. 6½ seats
Hindus	..	..	15.8%	
Sikhs	..	..	8.2%	
Others	..	..	5.1%	

The Hindu-Sikh *bloc* totals 24.0% as against the 71.0% of the Muslims. The latter are thus nearly three times the number of Hindus and Sikhs combined.

#### Sheikhupura district

Muslims	..	..	63.3%	} .. 5½ seats
Hindus	..	..	16.0%	
Sikhs	..	..	15.9%	
Others	..	..	4.8%	

The Hindu-Sikh *bloc* totals 31.9% as against the 63.3% of the Muslims. The latter are thus just double the number of the Hindus and Sikhs combined.

In these three districts the Muslims are in an impregnable position. Indeed they really form part of the Muslim zone and should be considered along with it. These districts will be entitled to send 21 members to the legislature. These can be added to 77 members from the Muslim zone giving the total 98.

In the other districts of Lahore division the position is as follows :

#### Lahore district

Muslims	..	..	57.3%	} .. 11 seats
Hindus	..	..	21.5%	
Sikhs	..	..	15.9%	
Others	..	..	5.3%	

Here the Hindu-Sikh *bloc* totals 37.4% as against the 57.3% of the Muslims. The Muslim majority is not so great as in the northern districts but it is substantial. The Muslims greatly outnumber the Hindus and Sikhs, being over one and a half times their number.

#### Amritsar district

Muslims	..	..	45.6%	} .. 9 seats
Hindus	..	..	21.6%	
Sikhs	..	..	30.9%	
Others	..	..	1.8%	

In this district the Hindus and Sikhs combined amount to 52.5% and are in a fair majority over the 45.6% Muslims.

#### Gurdaspur district

Muslims	..	..	49.6%	} .. 8½ seats
Hindus	..	..	26.0%	
Sikhs	..	..	16.2%	
Others	..	..	8.2%	

Here the Muslims outnumber the Hindus and Sikhs combined—49.6% against 42.2%—but the majority is not great. The position in Amritsar district is reversed. There are a fair number of "others" here.

Thus in these three districts, the Muslim position is strong in Lahore, fair in Gurdaspur and weak in Amritsar. But even in the last mentioned place the Muslims are by far the strongest single community.

It is highly likely that Muslims will capture some seats in these districts, specially in Lahore.



The Lahore division will thus be largely represented by Muslims and this representation added to that from the Muslim zone in the north and west ought to give them a clear majority.

This question can be considered from another point of view. Instead of looking at the divisions as a whole the individual districts may be taken. This will probably give a more accurate idea of the result.

There are 29 districts in the Punjab. These may be divided into four groups (1) overwhelmingly Muslim districts where the Muslim position is impregnable; (2) predominantly Muslim districts, where there is a Muslim majority but not so great as in (1); (3) districts where there is no special predominance of any community; and (4) overwhelmingly or predominantly Hindu-Sikh districts.

### I. Overwhelmingly Muslim districts

<i>Percentage of Muslims given after districts</i>		<i>No. of members in legislatures</i>
1. Gujrat	86.2	8
2. Shahpur	82.8	7
3. Jhelum	88.7	5
4. Rawalpindi	82.6	6
5. Attock	90.9	5
6. Mianwali	86.3	4
7. Montgomery	71.8	7
8. Lyallpur	60.7	10
9. Jhang	83.3	6
10. Multan	82.2	9
11. Muzaffargarh	86.8	5½
12. Dera Ghazi Khan	88.3	5
13. Sialkot	61.9	9½
14. Gujranwala	71.0	6
15. Sheikhpura	63.3	5
		<hr/> 98

### II. Predominantly Muslim districts

1. Lahore	H.	21.5	}	..	..	11
	M.	57.3				
	S.	15.9				
	O.	5.3				
2. Gurdaspur	H.	26.0	}	..	..	8½
	M.	49.6				
	S.	16.2				
	O.	8.2				
						<hr/> 19½

### III. Districts with no special predominance of any community

1. Jullundur	H.	29.4	}	..	..	8
	S.	25.1				
	M.	44.5				
	O.	1.0				

2. Ferozepur	H.	27·6	}	..	.. 11
	S.	27·6			
	M.	43·9			
	O.	·9			
3. Amritsar	H.	21·6	}	..	.. 9
	S.	30·9			
	M.	45·6			
	O.	1·8			
<hr/>					
28					

Even in these three districts the strongest single community is the Muslim.

#### IV. Overwhelmingly or predominantly Hindu-Sikh districts

1.	Hissar	H.	66·1						8
2.	Rohtak	H.	78·0						8
3.	Gurgaon	H.	66·7						7
4.	Karnal	H.	67·5						8
5.	Ambala	H.	53·8						7
6.	Simla	H.	71·2						2
7.	Kangra	H.	94·0						8
8.	Hoshiarpur	H.	53·3						9
9.	Ludhiana	H.	23·6	}	..	..	6		
		S.	41·5						
		M.	34·0						
		O.	·9						
									<hr/> 61½

According to this the Muslims get from their special zone of 15 districts where they are impregnable 98

The Hindus similarly get from their zone.. 61½

Two districts predominantly Muslim return .. 19½

Three districts more or less neutral, but Muslims strongest single community in each .. 28

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207

104 seats give an absolute majority in the legislature.

The result of the analysis of the figures for the districts leads us to the following conclusions:—

1. From the Muslim zone alone, where the Muslim position is unassailable, the Muslims get 98 seats or .. 47·3 of the total seats.
2. From the Hindu-Sikh belt where the Hindu-Sikh position is very strong the Hindus and Sikhs get 61½ seats or .. 29·8 Do.
3. In two districts where Muslims are predominant there are 19½ seats or .. 9·4 Do.

4. In 3 districts the strength of the various communities is more or less evenly balanced but Muslims are the strongest single community in each, total 28 seats or .. .. 13.5 of the total 100.0 seats.

It is exceedingly likely that from group II above, which is predominantly Muslim, the Muslims will get at least 10 out of the 19½ seats. This added to their seats from their particular zone gives them 108 seats which is a clear majority in the legislature. In group III above the Muslims should also get some seats as they are the strongest single community. They might safely count on 12 out of the 28. This raises the Muslim number in the legislature to 120 out of 207 or 58% of the total. Thus on a conservative estimate Muslims are highly likely to have 58% of the seats in the legislature.

## PUNJAB (BRITISH TERRITORY)

### Detailed population figures

#### Punjab

Total population	..	20,685,024	..	100.0 per cent.
Muslims	..	11,444,321	..	55.3
Hindus	..	6,579,260	..	31.8
Sikhs	..	2,294,207	..	11.1
Others (mainly Christians)	..	367,236	..	1.8

## PUNJAB DIVISIONS

### (Population figures in thousands)

<i>Ambala Division</i>		<i>Populations</i>	<i>Percentage</i>	<i>No. of members in legislature 1 for 100,000</i>
Total	..	3827	100	} .. 38
H	..	2556	66.6	
M	..	1006	26.3	
S	..	158	4.2	
O	..	106	2.8	
<b>Jullundur Division</b>				
Total	..	4128	100	} .. 42
H	..	1893	45	
M	..	1370	32.8	
S	..	880	21.0	
O	..	40	.9	
<b>Lahore Division</b>				
Total	..	4997	100	} .. 50
H	..	1033	20.7	
M	..	2849	57.0	
S	..	813	16.2	
O	..	303	6.1	

# Rawalpindi Division

Total	..	3461	100	} .. 35
H	..	296	8.5	
M	..	2973	8.0	
S	..	153	4.4	
O	..	38	1.1	

# Multan Division

Total	..	4218	100	} .. 42
H	..	602	14.3	
M	..	3246	76.9	
S	..	290	6.9	
O	..	80	1.9	

Note :—H=Hindu M=Muslim S=Sikh O=Others

## PUNJAB DISTRICTS

### 1. Overwhelmingly Muslim Districts

<i>District</i>		<i>Population in Thousands</i>	<i>Percentage</i>	<i>No. of members in legislature</i>
1. Gujrat	.. T.	824	100	} .. 8.2
	H.	59	7.2	
	M.	710	86.2	
	S.	49	6.0	
	O.	6	.7	
2. Shahpur	.. T.	720	100	} .. 7.2
	H.	79	11	
	M.	596	82.8	
	S.	30	4.2	
	O.	15	2.1	
3. Jhelum	.. T.	477	100	} .. 4.8
	H.	33	6.9	
	M.	423	88.7	
	S.	19	4.0	
	O.	2	.4	
4. Rawalpindi	.. T.	569	100	} .. 5.7
	H.	55	9.7	
	M.	470	82.6	
	S.	32	5.6	
	O.	12	2.1	
5. Attock	.. T.	512	100	} .. 5.1
	H.	25.5	5.0	
	M.	465.5	90.9	
	S.	20	3.9	
	O.	1	.2	
6. Mianwali	.. T.	358	100	} .. 3.6
	H.	45	12.6	
	M.	309	86.3	
	S.	3	.8	
	O.	1	.3	

7. Montgomery..	T.	714	100	}	.. 7.1
	H.	92	12.9		
	M.	513	71.8		
	S.	96	13.4		
	O.	13	1.8		
8. Lyallpur ..	T.	980	100	}	.. 9.8
	H.	117	18.1		
	M.	595	60.7		
	S.	161	16.4		
	O.	47	4.8		
9. Jhang ..	T.	570	100	}	.. 5.7
	H.	84	14.7		
	M.	475	83.3		
	S.	9	1.6		
	O.	2	.4		
10. Multan ..	T.	890	100	}	.. 8.9
	H.	129	14.5		
	M.	732	82.2		
	S.	18	2.0		
	O.	11	1.2		
11. Muzaffargarh	T.	568	100	}	.. 5.7
	H.	66	11.6		
	M.	493	86.8		
	S.	5	.9		
	O.	4	.7		
12. Dera Ghazi Khan (including Biloch tract).	T.	496	100	}	.. 5.0
	H.	54	10.9		
	M.	438	88.3		
	S.	1	.2		
	O.	3	.6		
13. Sialkot ...	T.	938	100	}	.. 9.4
	H.	183	19.5		
	M.	581	61.9		
	S.	75	8.0		
	O.	99	10.5		
14. Gujranwala ..	T.	624	100	}	.. 6.2
	H.	98	15.8		
	M.	443	71		
	S.	51	8.2		
	O.	31	5.1		
15. Sheikhpura..	T.	523	100	}	.. 5.2
	H.	84	16.0		
	M.	331	63.3		
	S.	83	15.9		
	O.	25	4.8		

---

15 Districts.

---

97.6 members

## II.—Predominantly Muslim Districts

(Where Muslims are greater than Hindus and Sikhs combined but are not so many as in I above).

1. Lahore	.. T.	1131	100	} .. 11.3
	H.	243	21.5	
	M.	648	57.3	
	S.	180	15.9	
	O.	60	5.3	
2. Gurdaspur	.. T.	852	100	} .. 8.5
	H.	222	26.0	
	M.	423	49.6	
	S.	138	16.2	
	O.	70	8.2	
<hr/> 2 Districts.				<hr/> 19.8 members.

## III.—Districts in which there is no special predominance of any community but Muslim community strongest single group

1. Jullundur	... T.	822.5	100	} .. 8.2
	H.	242	29.4	
	M.	366.5	44.5	
	S.	206	25.1	
	O.	8	1.0	
2. Ferozepur	.. T.	1098	100	} .. 11
	H.	303	27.6	
	M.	482	43.9	
	S.	303	27.6	
	O.	10	.9	
3. Amritsar	.. T.	929	100	} .. 9.3
	H.	201	21.6	
	M.	424	45.6	
	S.	287	30.9	
	O.	17	1.8	
<hr/> 3 Districts.				<hr/> 28.5 members.

## IV.—Overwhelmingly or predominantly Hindu Sikh Districts.

1. Hissar	.. T.	817	100	} .. 8.2
	H.	540	66.1	
	M.	216	26.4	
	S.	46	5.6	
	O.	15	1.8	
2. Rohtak	.. T.	772	100	} .. 7.7
	H.	602	78.0	
	M.	125	16.2	
	S.	1	.1	
	O.	44	5.7	

3. Gurgaon	..	T.	682	100	} .. 6.8
		H.	455	66.7	
		M.	217	31.8	
		S.	1	.1	
		O.	9	1.3	
4. Karnal	.	T.	829	100	} .. 8.3
		H.	560	67.5	
		M.	236	28.5	
		S.	12	1.4	
		O.	21	2.6	
5. Ambala	..	T.	682	100	} .. 6.8
		H.	367	53.8	
		M.	206	30.2	
		S.	98	14.4	
		O.	11	1.6	
6. Simla	..	T.	45	100	} .. 0.4
		H.	32	71.2	
		M.	7	15.5	
		S.	1	2.2	
		O.	5	11.1	
7. Kangra	..	T.	766	100	} .. 7.7
		H.	722.3	94.0	
		M.	38.3	5.0	
		S.	2	3	
		O.	3.4	.7	
8. Hoshiarpur	..	T.	927	100	} .. 9.3
		H.	494	53.3	
		M.	289	31.2	
		S.	133	14.3	
		O.	11	1.2	
9. Ludhiana	..	T.	568	100	} .. 5.7
		H.	134	23.6	
		M.	193	34.0	
		S.	236	41.5	
		O.	5	.9	

9 Districts.

60.9 members.

These figures demonstrate that quite apart from any artificial reservation of seats there is a natural reservation in more than three-fourths of the Punjab. In less than one-fourth there is some chance of free play. The distribution of population favours the majority community, Muslims, considerably.

## APPENDIX B

### *A note on the population figures of Bengal by religion*

The population of the British territory in Bengal at the 1921 census was 46,695,536. This was divided up by religion as follows:—

Muslims	..	25,210,802	..	54.0 per cent.
Hindus	..	20,203,527	..	43.3 „
Others	..	1,281,207	..	2.7 „

“Others” are chiefly tribal religions and Christians, the former being found largely in the hill tracts. They also include Jains and Buddhists etc., but there are not many of these.

The Muslims thus have a slight majority of 4% over all the others put together. This majority however is not evenly distributed over the province. The Hindus are as a matter of fact largely concentrated in one part of Bengal—the Burdwan division and part of the Presidency division—with the result that the Muslim majority elsewhere is far more than 4%. Bengal like the Punjab, presents definite zones of Hindu or Muslim population. Examining these zones roughly by divisions we find that three divisions are overwhelmingly Muslim, one is overwhelmingly Hindu, and one is more or less evenly balanced but with a 4% Hindu majority.

*No. of members of legislature  
1 per 100,000 population.*

#### A. Muslim Zone

1. Chittagong division	..	60
Muslims	.. 72.6 per cent.	
Hindus	.. 23.8 „	
2. Dacca division	..	128
Muslims	.. 69.7 „	
Hindus	.. 29.7 „	
3. Rajshahi division	..	103
Muslims	.. 61.4 „	
Hindus	.. 33.7 „	

#### B. Overwhelmingly Hindu Zone

4. Burdwan division	..	80
Muslims	.. 13.4 „	
Hindus	.. 82.4 „	

#### C. Moderately Hindu Zone

5. Presidency division	..	95
Muslims	.. 47.5 „	
Hindus	.. 51.4 „	

Total seats for Bengal on this ratio	466
--------------------------------------	-----



We see that the Muslim zone has 291 seats in it; the strong Hindu zone 80 seats and the moderately Hindu zone 95 seats. The total number of seats if one member is to be given for every 1,00,000 population comes to 466. Thus 234 gives a clear majority. In the Muslim zone alone there are 291 seats, that is 57 more than are necessary for a majority. In the Presidency division however Muslims are 47·5% and it is not conceivable that they can be ignored. They are sure to get a number of seats there. The distribution of population is such that they are bound to get more seats than these numbers warrant. They may suffer from economic causes or educational backwardness but the loss from this cannot outbalance the gains from solid majorities in the Muslim zone.

The population figures can be examined in greater detail by districts. The actual figures by religions are given at the end of this note. These figures can be classified as follows:—

			<i>No. of members in legislature.</i>
<b>A. Overwhelmingly Muslim Districts</b>			
Chittagong	..	..	16
Noakhali	..	..	15
Tippera	..	..	27
Mymensing	..	..	48
Bakarganj	..	..	26
Faridpur	..	..	23
Dacca	..	..	31
Pabna	..	..	14
Bogra	..	..	10
Rangpur	..	..	25
Rajshahi	..	..	15
Jessore	..	..	17
Nadia	..	..	15
			<hr/> 282 <hr/>
<b>B. Predominantly Muslim Districts</b>			
Murshidabad	..	..	13
Malda	..	..	10
			<hr/> 23 <hr/>
<b>C. Predominantly Hindu District</b>			
Jalpaiguri	..	..	9
<b>D. Neutral Districts</b>			
Khulna	..	..	14
Dinajpur	..	..	17
Chittagong Hill Tribes	..	..	2
			<hr/> 33 <hr/>

## E. Overwhelmingly Hindu Districts

Burdwan	..	14
Birbhum	..	8
Bankura	..	10
Midnapur	..	27
Hooghly	..	11
Howrah	..	10
24 Parganas	..	26
Calcutta	..	9
Darjeeling	..	3
		<hr/>
		118

This analysis of district figures leads us to the same conclusion as the analysis of the division figures. The Muslim and Hindu zones are solid blocks which are natural areas of reservation if voting is to take place on religious lines. The Muslim zone including both groups A and B gives us as many as 305 seats. Even leaving out group B we have 282 seats which is far more than the number required to give a majority.

## ANALYSIS OF POPULATION OF BENGAL BY RELIGION

### A. Bengal Divisions

<i>Population in thousands</i>		<i>Percentage</i>	<i>No. of members in Legislature 1 per 100,000</i>
<b>Burdwan Division</b>			
Total	8050	100	} .. 80
Hindus	6607	82.1	
Mohammedans	1082	13.4	
Others	361	4.5	
<b>Presidency Division</b>			
Total	9461	100	} .. 95
Hindus	4864	51.4	
Mohammedans	4476	47.5	
Others	120	1.2	
<b>Rajshahi Division</b>			
Total	10345	100	} .. 103
Hindus	3487	33.71	
Mohammedans	6349	61.4	
Others	508	4.9	
<b>Dacca Division</b>			
Total	12837	100	} .. 128
Hindus	3813	29.7	
Mohammedans	8946	69.7	
Others	78	.6	
<b>Chittagong Division</b>			
Total	6000	100	} .. 60
Hindus	1432	23.8	
Mohammedans	4356	72.6	
Others	212	3.5	

# All Bengal British Territory

Total	46695	100	} .. 467
Hindus	20203	43·3	
Mohammedans	25211	54·0	
Others	1281	2·7	

## B. Bengal Districts

<i>Districts</i>	<i>Population in thousands</i>	<i>Percentage</i>	<i>No. of members in Legislature per 100,000</i>
<b>Burdwan Division</b>			
1. Burdwan ..	T. 1439	100	} .. 14
	H. 1122	78·0	
	M. 266	18·5	
	O. 50	3·5	
2. Birbhum ..	T. 848	100	} .. 8
	H. 577	68·1	
	M. 213	25·1	
	O. 58	6·8	
3. Bankura ..	T. 1020	100	} .. 10
	H. 880	86·3	
	M. 47	4·6	
	O. 93	9·1	
4. Midnapur ..	T. 2667	100	} .. 27
	H. 2352	88·2	
	M. 181	6·8	
	O. 134	5·0	
5. Hooghly ..	T. 1080	100	} .. 11
	H. 885	81·9	
	M. 173	16·0	
	O. 22	2·1	
6. Howrah ..	T. 997	100	} .. 10
	H. 791	79·3	
	M. 202	20·3	
	O. 4	·4	

## Presidency Division

7. 24 Parganas ..	T. 2628	100	} .. 26
	H. 1687	64·2	
	M. 910	34·6	
	O. 31	1·2	
8. Calcutta ..	T. 908	100	} .. 9
	H. 643	70·8	
	M. 209	23·0	
	O. 56	6·2	
9. Nadia ..	T. 1487	100	} .. 15
	H. 582	39·1	
	M. 895	60·2	
	O. 10	·7	

10. Murshidabad	T.	1262	100	}	..	13
	H.	569	45.1			
	M.	676	53.6			
	O.	17	1.3			
11. Jessore	T.	1722	100	}	..	17
	H.	656	38.2			
	M.	1063	61.7			
	O.	2	.1			
12. Khulna	T.	1453	100	}	..	14
	H.	727	50.0			
	M.	723	49.8			
	O.	3	.2			

### Rajshahi Division

13. Rajshahi	T.	1489	100	}	..	15
	H.	318	21.3			
	M.	1140	76.6			
	O.	31	2.1			
14. Dinajpur	T.	1705	100	}	..	17
	H.	752	44.1			
	M.	837	49.1			
	O.	116	6.8			
15. Jalpaiguri	T.	936	100	}	..	9
	H.	515	55.0			
	M.	232	24.8			
	O.	189	20.2			
16. Rangpur	T.	2507	100	}	..	25
	H.	791	31.5			
	M.	1706	68.1			
	O.	10	.4			
17. Bogra	T.	1048	100	}	..	10
	H.	174	16.6			
	M.	865	82.5			
	O.	9	.9			
18. Darjeeling	T.	283	100	}	.	3
	H.	201	71.0			
	M.	9	3.2			
	O.	73	25.8			
19. Pabna	T.	1389	100	}	..	14
	H.	334	24.1			
	M.	1055	75.8			
	O.	1	.1			
20. Malda	T.	985	100	}	..	10
	H.	400	40.6			
	M.	508	51.6			
	O.	77	7.8			

### Dacca Division

21. Dacca	T.	3125	100	}	..	31
	H.	1069	34.2			
	M.	2043	65.4			
	O.	13	.4			

22. Faridpur	..	T.	2250	100	}	..	23
		H.	816	36.3			
		M.	1428	63.5			
		O.	6	.3			
23. Bakarganj	..	T.	2623	100	}	..	26
		H.	754	28.7			
		M.	1851	70.6			
		O.	18	.7			
24. Mymensing	..	T.	4838	100	}	..	48
		H.	1174	24.3			
		M.	3624	74.9			
		O.	40	.8			
Chittagong Division							
25. Tippera	..	T.	2743	100	}	..	27
		H.	708	25.8			
		M.	2033	74.1			
		O.	2	.1			
26. Noakhali	..	T.	1472	100	}	..	15
		H.	329	22.3			
		M.	1142	77.6			
		O.	1	.1			
27. Chittagong	..	T.	1611	100	}	..	16
		H.	364	22.6			
		M.	1172	72.8			
		O.	74	4.6			
28. Chittagong Hill tracts	..	T.	173	100	}	..	2
		H.	32	18.5			
		M.	7	4.1			
		O.	134	77.4			
				TOTAL	..	465	

T.=Total

H.=Hindus

M.=Mohammedans

O.=Others

## APPENDIX C

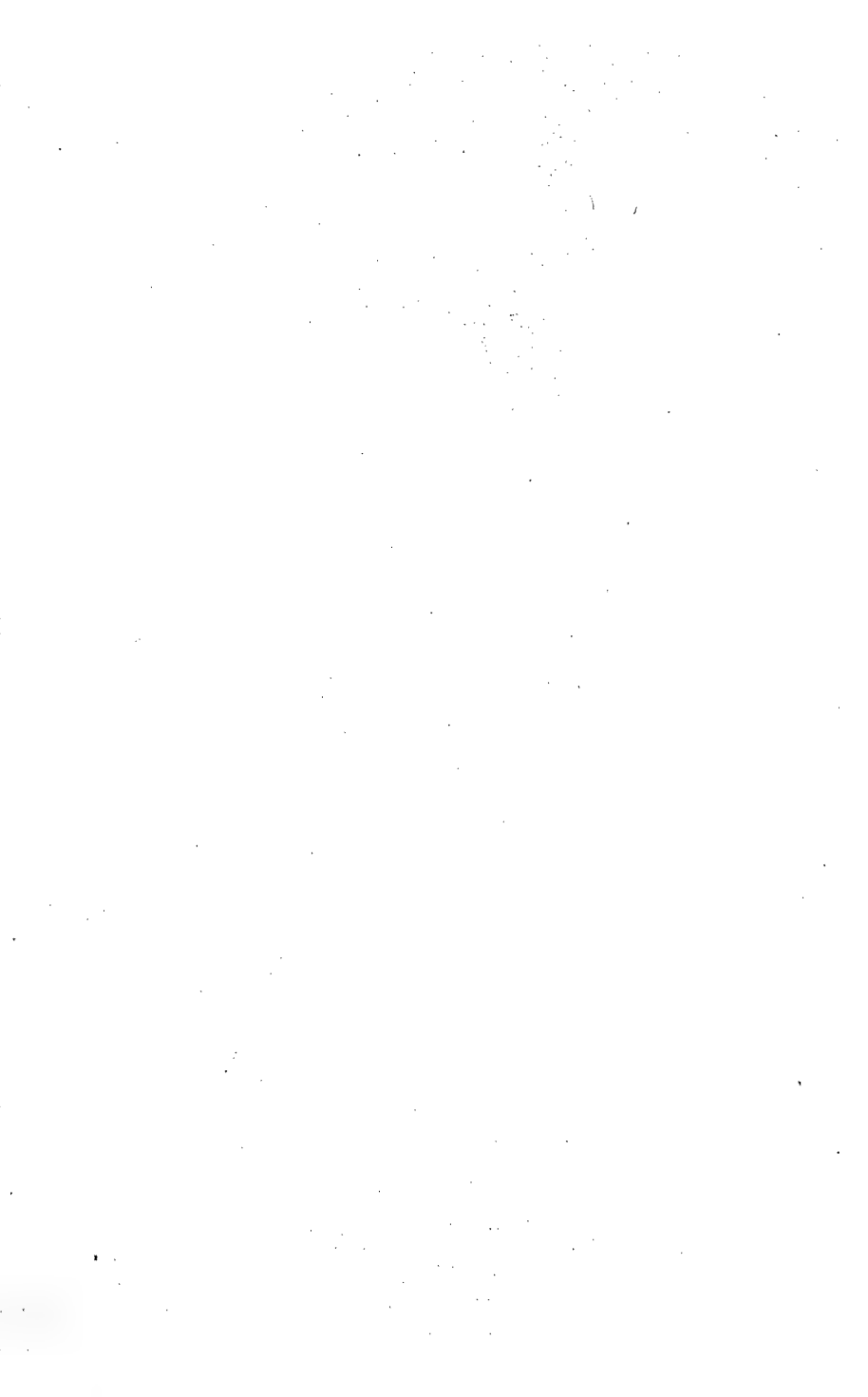
### Statement about elected members of the District Boards in Bengal ( 1927-1928 )

<i>Names of districts</i>	<i>Total no. of seats</i>	<i>No. of Hindu members</i>	<i>No. of Moham- medan members</i>
1. 24 Parganas..	20	16 (64.2)	4 (34.6)
2. Bogra ..	15	4 (16.6)	11 (82.5)
3. Bakargunj ..	20	5 (1 Christian) (28.7)	15 (70.6)
4. Midnapore ..	22	21 (88.2)	1 ( 6.8)
5. Rajshahi ..	18	7 (21.3)	11 (76.6)
6. Rangpore ..	18	7 (31.5)	11 (68.1)
7. Khulna ..	16	11 (50.0)	5 (49.8)
8. Hooghly ..	20	17 (81.9)	3 (16.0)
9. Darjeeling ..	20	18 (Non- Mohammedan) (71.0)	2 ( 3.2)
		Others 25.8	
10. Mymensingh	22	Nil (24.3)	22 (74.9)
11. Pabna ..	10	3 (24.1)	13 (75.8)
12. Noakhali ..	16	6 (22.3)	10 (77.6)
13. Jalpaiguri ..	16	14 (55.0)	2 (24.8)
		Others 20.2	
14. Tippera ..	19	13 (25.8) (3 nominated, elec- tion having failed in Ch and pur Sub-Division).	6 (74.1) (2 nominated)
15. Nadia ..	20	15 (39.1)	5 (60.2)
16. Burdwan ..	16	14 (78.0)	2 (18.5)
17. Murshidabad	15	7 (45.1)	8 (53.6)
18. Faridpur ..	20	8 (36.3)	12 (63.5)
19. Malda ..	15	8 (40.6)	7 (51.6)

(Election failed-all nominated)

20. Howrah ..	12	10 (79·3)	2 (20·3)
21. Beerbhum ..	16	15 (68·1)	1 (?) (25·1)
22. Bankura ..	10	9 (86·3)	1 (4·6)
23. Jessore ..	16	1 (38·2)	15 (61·7)
24. Dacca ..	22	16 (34·2)	6 (65·4)
25. Chittagong ..	20	Nil (22·6)	20 (72·8)
26. Dinajpur ..	18	4 (44·1)	14 (49·1)

*N. B.*—The figures given in brackets are ratios to the total population.



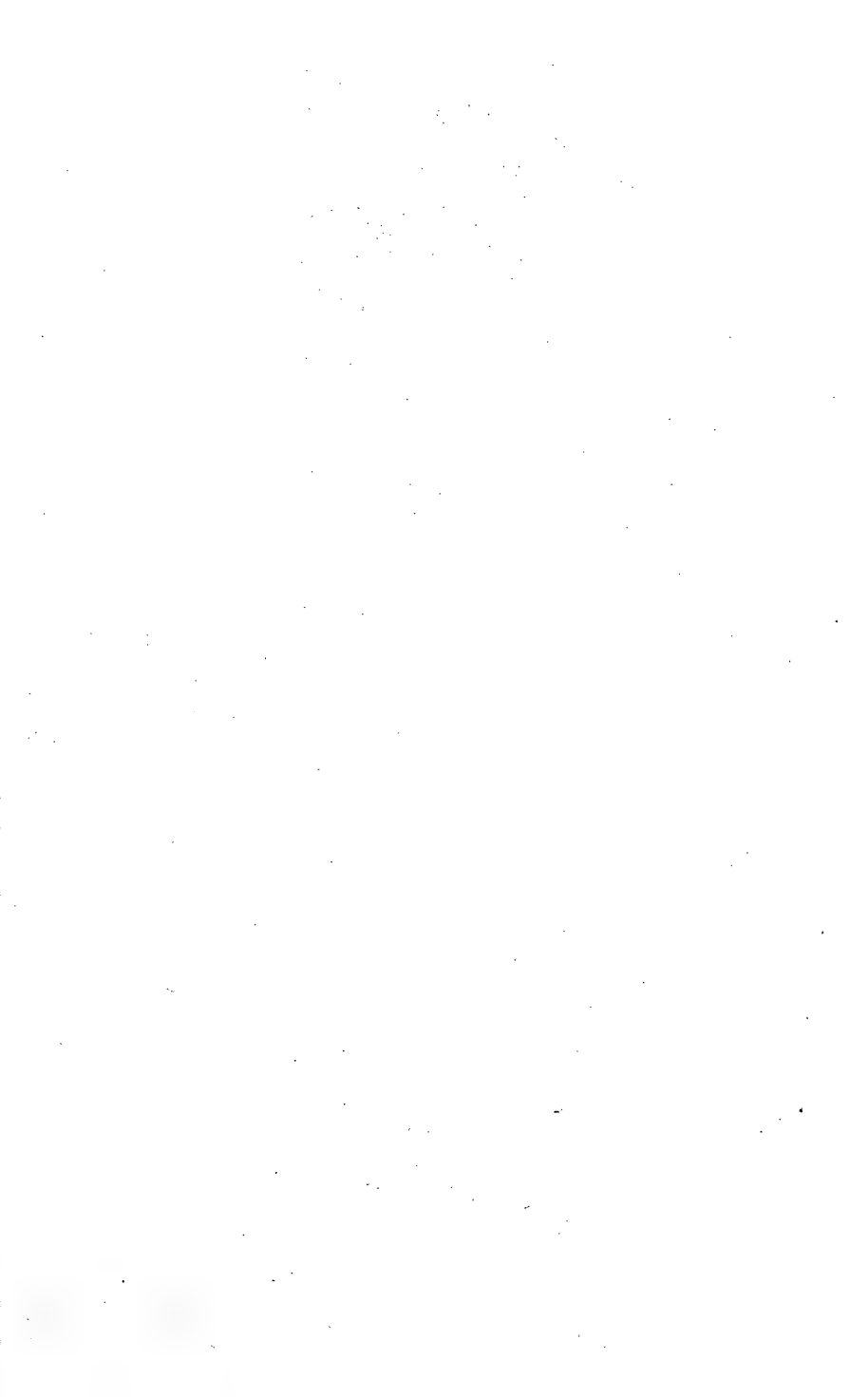


# All Parties Conference 1928

## Supplementary Report of the Committee

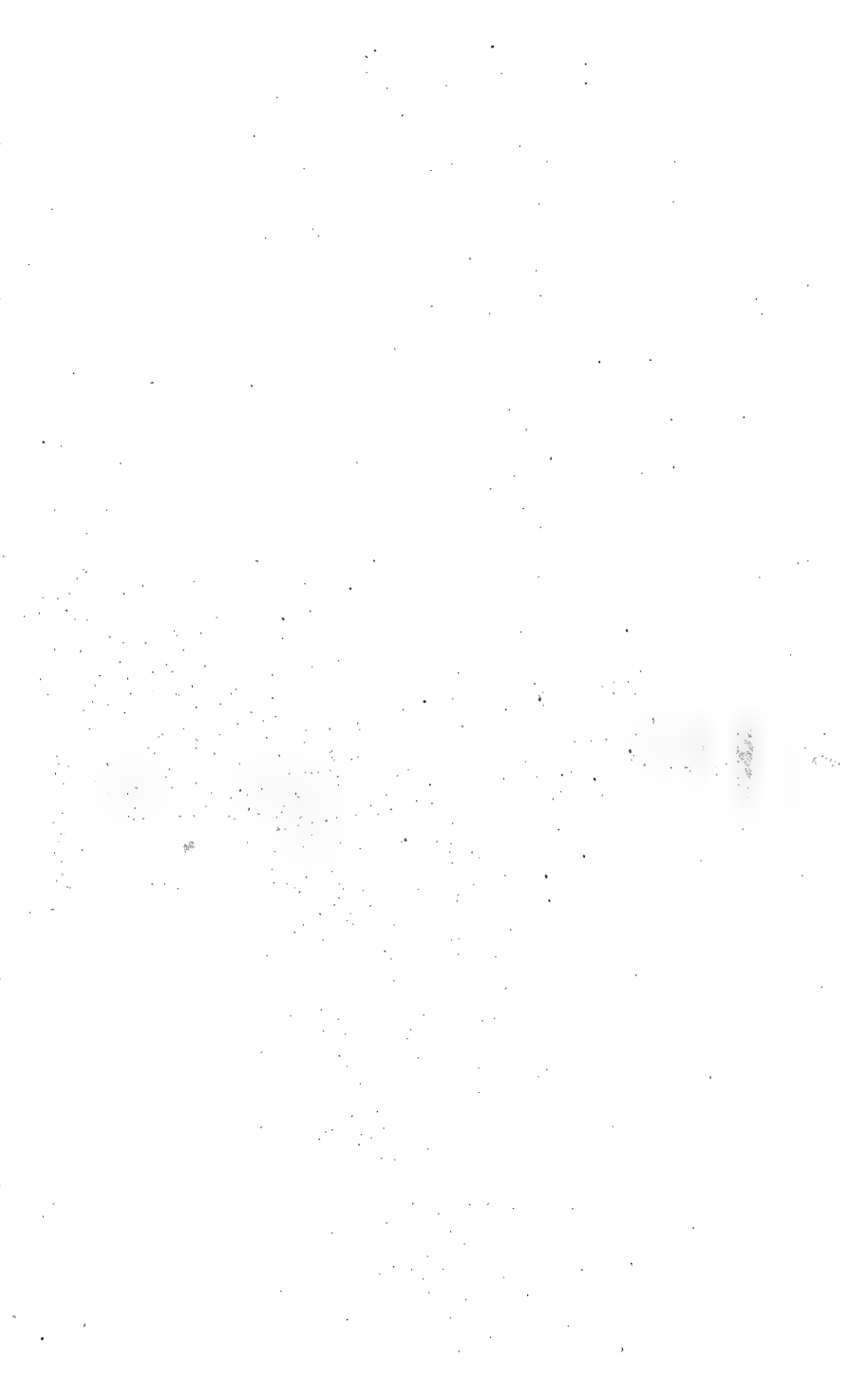
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*Price Eight Annas*



## LALA LAJPAT RAI

It is painful to us to have to issue this supplementary report without the signature of our late distinguished colleague Lala Lajpat Rai who passed away suddenly after the last meeting of the Committee and before this report was ready. Irreparable as the loss of this great man is to the whole country, it falls with special severity on us who had the honour and privilege of being associated with him in his life's last great work. It is to his deep earnestness and untiring labours that the main Report and the Lucknow Resolutions owe their wide acceptance throughout the country and poor consolation as it is we still have the melancholy satisfaction of being able to say that the conclusions embodied in this report had his full approval. He was a great force making for unity and, if he had been spared, was certain to contribute materially to the success of the Convention as he did at Lucknow in August. He is not with us here any more but the work of the Convention is of the nature of a sacred trust left by the departed patriot and the inspiration of his own lofty example will, we are confident, lead us to success.



## INTRODUCTORY

Our task now is to carry out the instructions given to us by the Lucknow Conference. That task we have endeavoured to perform. We venture however to make some observations in the hope and belief that they may remove some of the misapprehensions which have arisen in certain quarters in regard to the scope and effect of our recommendations.

We did not expect complete unanimity about our recommendations. There is nothing more controversial in human affairs than the evolution of a constitution. Whenever such an attempt has been made, whatever the circumstances have been, peaceful or disturbed, opinion has been sharply divided. We expected, therefore, a sharp division of opinion in India. It has been an agreeable surprise to us, however, that these differences of opinion have not been very substantial or fundamental. Such differences as have arisen are, in our opinion, indicative of a healthy growth of public interest in constitutional questions. The issue of the constitution has become a live issue and one is bound to note that the various opinions are based on the strength and seriousness of conviction. The public mind has been impressed and stirred to an extent not experienced before.

Our critics belong to two large groups—those, chiefly English, who describe our recommendations as fantastic or impractical, and those in India who think that we do not go far enough or who criticise details. We have little to say to our foreign critics. Reason seldom, if ever, makes a strong appeal when self-interest is concerned. "The convictions of the mass of mankind," said John Stuart Mill, "run hand in hand with their interests and class feelings." We have a strong faith, stronger than either politicians or philosophers generally have, in the influence of reason and virtue over men's minds, but it is in that of the reason and virtue of their own side of the question. We expect few conversions by the mere force of reason from one creed to the other."

We are not sanguine enough, therefore to expect to convince or convert those who have made it their business in the past to carry on an active propaganda in the English press and elsewhere against India. But even those who are habitually hostile to us have found it impossible to ignore the Report. The real conflict lies between two sets of ideas—the democratic and the autocratic. We seek to establish a democratic form of government. Our

English critics, long used to unfettered autocracy in India, cannot swallow this democratic pill, in spite of their loudly expressed enthusiasm for democracy nearer home. This enthusiasm for democracy resolves itself in India into the perpetuation of autocracy under the hollow shell of democratic forms. A false affinity to democratic ideals and methods without its essence is even more undesirable than naked autocracy; for it misleads the superficial.

A charge brought against us by our critics in England is that we have followed European and particularly British models and have betrayed an utter lack of originality. We frankly confess that we have not been original. We have been content to follow models which have been tried and tested in other parts of the world and which even the framers of the Montagu-Chelmsford constitution professed to follow. There is no patent in constitutions, and we were not aware of the fact that it is a special virtue in a constitution that it should be unique and unlike all others.

Those who imagine that democracy is the special prerogative of the west know little of history. But whatever the past may have been we should like to know from our critics what their alternative is to democracy. The only alternative, so far as we can see, is some form of autocracy.

The seat of autocracy, as far as we are concerned, has been Whitehall, and we are inclined to think that this excessive desire for an "oriental" constitution for India means a desire to perpetuate the autocracy of Whitehall in some shape or form. But it is time that our critics realised that whatever else may happen it is clear that no kind of autocracy is going to be tolerated in India. In his speech at Albert Hall on October 27, Prime Minister Baldwin said: "absolutism in monarchies is dead and absolutism in States is going."

It is said sometimes that although autocracy has to go ultimately there must be several steps leading up to its total abolition. Caution and expediency are sometimes necessary for the politician or statesman but there are occasions when half measures are dangerous. That time has come in India to-day.

There can be no question now of provincial autonomy with the Government of India or the Secretary of State retaining their powers. Only if the fullest responsibility is cast on the shoulders of the legislatures can they be expected to discharge their duties fearlessly and efficiently. Absence of such responsibility or divided responsibility leads to all manner of anomalies and monstrosities and woefully affects the morale both of public life and public administration.

We have had an example of this in the communal tension that has prevailed in the country during the last three or four years. The ardent communalist feels that his strength lies in feeding

and supporting the communal feeling. The administration finds it difficult to control the enthusiasm or fanaticism of the communalist except by compromises which are seldom successful. The position could not have been worse under responsible government where law and order rest with a popular legislature.

The ranks of our critics have been joined recently, we regret to say, by the Aga Khan. He tells us that "the British people could never honourably agree to leave an armed force, or even civil administrators, in a country for the good government of which it was no longer responsible.....If the British did this in a fit of madness, of which there has been no parallel in history, they would go down, not only in the estimation of the whole world, but in history for all time, for supplying armed force to a country wherein their responsibility had come to an end to be administered at the beck and call of other people." The Aga Khan is very solicitous about the honour and prestige of the British people. We wish he were equally concerned with the honour of his own country and people. There are some things to which the Indian people also will never agree and one of these is the perpetuation or continuation of British autocracy in India. The Indian people, we believe, are still prepared to welcome honourable co-operation with the British in many fields but that co-operation cannot be domination of any kind. We are prepared to welcome British experts, civil or military, on terms honourable to both parties. If, however, they only wish to come here to dominate and not on any other conditions then they are welcome to stay away. We shall take the risk and make other arrangements.

The Aga Khan's argument is creditable neither to the British nor to the people of this country, and if it represents any responsible opinion in England, we can only say that there was little of genuineness about the declarations that have so frequently been made about the establishment of responsible government in India. The internal position in India is not and cannot be worse than it was in Canada when Lord Durham wrote his famous report, or even when responsible government was actually established in Canada. He describes the French and the British "not as two parties holding different opinions and seeking different objects in respect to government but as different races, engaged in a national contest." "The mutual dislike of the two classes", says Lord Durham, "extends beyond politics into social life, where, with some trifling exceptions again, all intercourse is confined to persons of the same origin. Grown up persons of a different origin seldom or never meet in private societies and even the children, when they quarrel, divide themselves into French and English like their-parents. In the schools and the streets of Montreal, the real capital of the Province, this is commonly the case.....Such a sentiment is naturally evinced

rather by trifles than by acts of intrinsic importance. There has been no solemn or formal declaration of national hostility, but not a day nor scarcely an hour passes without some petty insult, some provoking language, or even some serious mutual affront, occurring between persons of French and British descent."

A similar argument about India's incapacity to defend her frontiers and the consequent impossibility of India achieving responsible government was advanced in 1919. In dealing with it, Mr. Montagu said: "Parliament, I think, must see that you do not at one and the same moment withhold things for a particular reason, and then refuse the opportunity of procuring them. Do not at one and the same time say it is only a minority that wants them, when that minority tries hard to convert the majority. You must expect to see political life developed throughout India. Do not deny to India self-government, because she cannot take her proper share in her own defence and then deny to her people the opportunity of learning to defend themselves. These are problems of which Parliament takes upon itself the responsibility by the passage of this Bill."

The Aga Khan advocates independence for each Indian province and says that the position of each province must be "akin to that of Bavaria in the former German confederation, rather than that of an American State or a Swiss Canton." Some Indian princes and some Indian politicians, particularly of the Muslim community, have also laid stress on the future constitution being of a federal and not of a unitary type.

The Aga Khan's reference to Bavaria is, we think, particularly unfortunate. "The North German confederation," says Gooch in his book on Germany, "was transformed into the German Empire by the adhesion of the Southern States, and the *amour propre* of Bavaria was flattered by some innocent constitutional privileges. The Reich consisted of twenty two States, and the three Hanse towns. The Imperial dignity was conferred on the kings of Prussia in perpetuity, but Bismarck took care not to ruffle the feathers of the German Princes. King William became German Emperor, not Emperor of Germany, and the juridical sovereignty of the Reich was held to reside in the totality of the federated governments. The constitution, indeed, represented a skilful compromise between conflicting claims and principles.... Little enthusiasm for Prussian hegemony could be expected in the south, and the achievement of German unity under Prussian headship caused as little satisfaction to Gervinus and Constantin Frantz as the consummation of Italian unity under the House of Savoy brought to the republican soul of Mazzini." Again, Emil Ludwig in his "Life of Bismarck" says, "as a liegeman of the king of Prussia, as a Knight of Brandenburg, his only concern was with the expansion of Prussia; and he would much rather, after



the manner of earlier centuries have conquered German princes in order to enlarge Prussia, than have troubled himself about the problems of the Germanic federation. 'Primus' " was what he wanted to be and only perforce 'inter pares.' " We sincerely hope and trust that the analogy of Bavaria will not be pressed as a model for an Indian federation.

There has been a great deal of argument in the country on the respective merits of a federal or unitary type of government. We would like to point out however that political experience in other parts of the world has shown how impracticable it is to establish a new constitution on either an exclusively federal or an exclusively unitary model. The tendency in recent times has been towards a compromise. In some constitutions one type dominates, in others the other type. On this question we should like to quote a passage from Brand, a writer who played a considerable part in the evolution of the constitution of the Union of South Africa. In his book on South Africa he says : "Federalism is after all a, *pis aller*, a concession to human weakness. Alexander Hamilton saw its dangers, and only acquiesced because by no other means was union possible. In Canada, Sir John Macdonald strongly favoured a legislative union, but was obliged to bow to the intense provincialism of Quebec. In Australia the narrow patriotism of the different states has imposed upon the Federal Government limitations which are generally admitted to be checking that country's advance. Federalism must be accepted where nothing better can be got, but its disadvantages are patent. It means division of power and consequent irritation and weakness of the organs of government, and it tends to stereotype and limit the development of a new country. South African statesmen have been wise to take advantage of the general sentiment in favour of a closer form of union."

In drawing up our proposals we have deliberately declined to be overborne by one type or the other. We have borne in mind the peculiar position of India and have provided for the development of the fullest possible provincial life compatibly with national interests. We have kept before us the peculiar problem of minorities in various provinces, which, in our opinion, necessitates the reservation of a certain measure of interference, in cases of grave emergency, on the part of the central government. The limits we have provided for provincial activities and functions are very wide, and within these limits provincial governments will be masters within their own houses, free from the control of the central government. It is obvious, however, that there is a very large field of state activity which, in any system of stable administration, must be covered exclusively by the central government which alone can safeguard national interests and reconcile conflicting claims between province and

province. It is from this point of view that we have approached our task and we are happy to be able to say that the vast majority of those of our countrymen who have thought over the matter have expressed their approval of the line adopted by us. We trust that in examining our proposals more heed will be paid to the substance and less to academic theories.

Our proposal to have adult franchise has also been subjected to some criticism though we are glad to note that it has met with a large measure of support. This proposal was part of the communal recommendations and cannot be separated from them. We are fully aware of the difficulties of adult franchise, but both theory and practice strongly support it. Professor Laski has pointed out that "neither sex, nor property, neither race nor creed, ought to prevent a citizen from aiding in the choice of his rulers. This choice may often be wrong, but then democracy lives by the method of trial and error. If the citizen has rarely the knowledge necessary to give a reasoned choice, it is the duty of the State to organise on his behalf easy access to such knowledge. For, whenever the body of voters is limited, the welfare realised usually excludes that of the persons excluded. No test has been devised which enables us to limit the franchise in such a fashion as to equate civic virtue with the possession of the franchise. Its limitation to property owners, was disastrous to those who did not own property. Its limitation to a creed or caste meant always special privilege to that creed or caste. Even Mill's test of education beyond simple literacy is unrelated to the virtues we require." Another recent writer on the new democratic institutions of Europe, observes. "The new constitutions have with one accord adopted equal universal suffrage. It is the inalienable right of every citizen to vote, and people insist on expressing their sovereignty directly, and not through the medium of the more intelligent or wealthy classes in society."

Theory thus is entirely in its favour. In this connection the recommendations of the Ceylon Commission are of some interest. They have advocated a wide franchise because this would expedite the passing of progressive social and industrial legislation, and would lessen corruption and the manipulation of the electorate. A wide franchise they felt would also automatically raise the position of the depressed classes. Dealing with this question, they say: "We have here to consider whether or not it was desirable that they should be given some form of special representation. It seems to us, however, apart from the general considerations we have advanced, that the enfranchisement of these people and the provision of equal and adequate educational facilities are the true remedies for their condition."

It has been stated that adult franchise involves two dangers.

The first is that the electorates are very largely uneducated and cannot be expected to exercise the franchise intelligently or to control their representatives. The second is the vastness of the country and the inadequacy of the means of transport which will make it difficult to evolve a satisfactory machinery for the functioning of the system. As regards the first we think that the repeated exercise of the right to vote is in itself a powerful educative factor. Literacy or some education has not been the test of the franchise in other countries when adult franchise was adopted and we see no reason why it should be so in India. We maintain that the average Indian voter understands his business and that he can form an opinion on matters that affect him directly. He will be no more liable to wire-pulling than the average voter in other countries. A Parliament elected on a narrow franchise is more of a menace to stability than a Parliament elected on a wide franchise. A comparatively small class dominating over Parliament necessarily looks after itself and largely ignores the interests of others and thus gives rise to disaffection and discontent which may become a great menace to stability of government and society.

The second objection to adult franchise is the difficulty of devising machinery for the working of the system. We appreciate the difficulties but we certainly do not think that it is impossible to devise the machinery or to work it. It will no doubt involve heavier public expenditure but the principle involved is well worth paying for.

A few of our critics have presumed to say that our proposals are meant to ensure the supremacy of the Brahmans in the government of the country. If there was the slightest chance of this or of any small class becoming supreme or dominant adult franchise would do away with it. But to those who know anything of the texture of Indian politics it is apparent that political leadership during the last fifty years has not been the monopoly of Brahmans. Such Brahmans as have come to the fore in the political life of the country—men like Mr. Tilak, Mr. Gokhale and Mr. Shastri—have acquired their position and influence by the possession of the very same qualities of leadership which have enabled non-Brahmans like Mr. Gandhi, Mr. C. R. Das, Lala Lajpat Rai and Mr. Jinnah to lead and influence public opinion in India. We might also refer to the great leaders of the past such as Dadabhai Naoroji, Pherozeshah Mehta, Budr-ud-din Tyabji, Bhupendra Nath Basu, Kalicharan Banerji (a Christian) and R. C. Dutt.

We have discussed at length in the main Report the problem of the Indian States and their relation to the future commonwealth Government. Our position however seems to have been misunderstood in certain quarters and we shall try to remove this

misconception and meet some of the criticisms made.

In the Report we quoted extensively from Lord Reading's letter dated 27th march, 1926. We did so to give the latest official and authoritative exposition of the theory of relationship between the British Government and the Indian States. We did not discuss the merits of the claim put forward in that letter. Indeed we pointed out that the letter had been criticised and had caused much dissatisfaction and searching of heart. We should not therefore be understood to endorse this letter or the principles it contains.

We have been led to believe from all that has appeared in the press in India and England and from Sir Leslie Scott's letter which appeared in the Law Quarterly Review that the Indian princes were anxious to urge and establish the theory that their relations were directly with the Crown and that the Government of India were acting as the agents of the Crown. Further, that the Government of India would always continue to be of one particular pattern and any change in its character and composition would necessarily affect the continuance of these relations. We question the soundness of this theory and we have pointed out and emphasised the dangerous implications that follow from it.

Since our Report was published, it has been announced that the Princes are not going to raise this question before the Butler Committee. We are glad of this decision although the Princes have not so far authoritatively repudiated Sir Leslie Scott's views on the matter.

In our Report we expressed our sympathy with the desire of the Indian Princes to have their grievances remedied. How far and how best these grievances can be remedied, we stated, were matters for investigation and joint consultation. The Maharaja of Patiala has dealt with the present position of the Princes in an article in the November number of the Contemporary Review. Referring to a scheme put forward by the Princes before Mr. Montagu, he says: "We wanted three things: a Chamber of Princes, which would enable the States to speak with a common voice, and thus take their share along with British India in framing policies and taking decisions which affected the whole of India in common; an advisory board . . . . to be associated with the Political Department, . . . . and lastly a system of arbitration . . . . between the States and the Government of India."

So far as the demand for arbitration is concerned we have ourselves made a recommendation to that effect in our Report. In regard to the Chamber of Princes, politicians in British India are surely not responsible for its defects and failings. Nor has the Indian Legislature been in any way responsible in framing policies for the Indian States. That responsibility has rested entirely on the Government of India or the Secretary of

State. The Maharaja of Patiala complains that British India dictates the policy for the whole of India and the States are given no share in framing it. This is true but by British India here is only meant the Government of India and the Secretary of State, and not the Indian Legislature.

We have not suggested nor do we desire to withhold from the States what belongs to them or should belong to them legitimately. Clause 85 of our draft has been subjected to some criticism on the ground that it seeks to perpetuate the very evils against which the States are now protesting. We should like to make it clear that we do not desire any encroachment upon the rights of the States. We stand for just and equitable treatment and indeed in the main Report we stated that "the Government of India of the future will discharge their obligations in their integrity and with every desire to promote harmonious relations and no desire to override cherished privileges or sentiments."

It has also been urged that clause 85 arrogates to the Commonwealth a position of superiority over the States. We would point out however that if the Government of the Commonwealth must discharge obligations towards the States, it is only fair that it must also exercise those rights which under the constitution will belong to it. There is no question of superiority or inferiority.

It has also been urged by the Maharaja of Bikaner that the words "arising out of treaties, engagements, sanads, or similar other documents" in the second part of clause 85 may exclude certain fiscal and other justiciable matters. We would point out that it is a question of policy whether fiscal matters should be referred to a judicial tribunal or determined by some other machinery which may be established with common consent. Other justiciable matters may be brought before the Supreme Court if it is found that they can be dealt with in this way. We have no objection to this. If they cannot be so dealt with we would be willing to co-operate in exploring other avenues of settlement.

Lastly, we would recall that we have referred in our original Report to the possibility of a Federation between British India and the States. We stated then that "if the Indian States would be willing to join such a Federation, after realising the full implications of the federal idea, we shall heartily welcome their decision and do all that lies in our power to secure to them the full enjoyment of their rights and privileges." We stand by that opinion. We note that the Maharaja of Patiala says, in the article referred to above, that the Indian Princes "are perfectly prepared to entertain the idea of a Federation such as has been proposed in the memorandum presented to the Simon Commission by the European Association of India." If the idea of a Federation is being entertained seriously we would suggest that the Indian

Princes might give some consideration to the proposals put forward by Indian politicians also. An Indian Federation, if it is to be a reality, must not only define and regulate the relations between the Commonwealth and the States on a just and equitable footing, but must also lay the foundations of a strong central authority and at the same time should give the fullest measure of freedom to each constituent unit to work out its own evolution.

The telegraphic summary of the debate in the House of Lords initiated on Lord Olivier's motion on the 5th December was received when these pages were in proof. We can only take a very brief notice of it. There should be no doubt now that the position we have taken in the main Report and in the preceding pages is thoroughly justified. Three main points emerge clearly from the debate. The first and the most important is that "the rights and duties of the Paramount power set forth in the famous letter to the Nizam of Hyderabad" have received the approval of the British Cabinet. The result is that the Princes have not at all advanced their case by their recent activities in India and in England and remain exactly where they were when the "famous letter" was published. We offer them our sincere sympathy. The next point is that it is not the intention of the British Government "to compel or in any way force upon the States a different constitution than the one they at present enjoy." There is of course no question of any compulsion and we never suggested any, but it is for the Princes to consider whether they are content with the "constitution they at present enjoy" which is none other than that laid down in the "famous letter." It is a mischievous suggestion which we entirely repudiate that there is any scheme in contemplation by which the Princes are to be "placed in a position of subservience to the legislatures of the central or provincial governments." The idea of a democratic legislature holding in subservience any class of persons who agree to participate in its proceedings is wholly inconceivable to us. The third point arises from the significant remark of Lord Reading. The author of the "famous letter" has said that the Princes were never slow to fall in with any view that might be put forward by the Government of India which was founded upon a desire to protect India or strengthen India in any way." The plain English of this in our opinion is that the Princes are to be used to strengthen the present autocratic government of India. We trust the Princes will seriously consider their position in the light of this debate and choose between the continuance of their rights and duties as set forth in the "famous letter" and the honourable membership of the Commonwealth of India. We hope they will choose wisely.

## CHAPTER I

### THE ENLARGED COMMITTEE

After making certain amendments to the recommendations of the Committee the Lucknow Conference by its resolution number 13 adopted in principle the constitution outlined in the main Report. The same resolution continues:—

“This Conference resolves to re-appoint the Nehru Committee with power to co-opt and authorises it to select and instruct a Parliamentary draftsman to put the constitution outlined and recommended by it as accepted by this Conference with all necessary ancillary and consequential provisions, in the shape of a bill to be placed before a convention of the representatives of all political, commercial, labour and other organisations in the country present at this Conference and others of not less than two years’ standing, provided that nothing will be added or altered which is inconsistent with the agreements and decisions arrived at by this Conference.

The Committee shall take all necessary steps for the holding of the said convention on such date as may be fixed by it.

In drafting the bill the Committee shall take into consideration Schedule I and Schedule II to the Report and the Committee is authorised to make such alterations in the said schedules as it may think necessary.”

Immediately after the conclusion of the Conference some members of the Committee present in Lucknow met and in consultation with the members of the Working Committee of the Congress selected Dr. Besant and the following gentlemen to be co-opted as members of the Committee: Dr. M. A. Ansari, Pandit Madan Mohan Malaviya, Lala Lajpat Rai, Maulana Abulkalam Azad, Mr. M. A. Jinnah, Mr. C. Vijayaraghavachariar and Maulana Abdul Kadir Kasuri. This selection was circularised to the members of the Committee who were not present at this informal meeting and their approval was subsequently received. With the exception of Mr. Jinnah who was not in the country the co-opted members signified their assent to serve on the Committee. On his return from Europe Mr. Jinnah declined to act. Our colleagues Messrs J. R. Pradhan and M. N. Joshi were unable to attend any of the meetings of the committee. We are sorry the time at our disposal did not permit of our obtaining their approval of the draft report before it was sent to the press. We

are therefore compelled to issue it without their signatures.

At a meeting of the enlarged Committee held at Simla on the 26th September it was decided to hold the Convention in Calcutta on the 17th December in order to enable the Indian National Congress and the other organisations to consider the decisions of the Convention at their annual sessions which are usually held during the Christmas week. Having regard to this decision it was pointed out that the interval was not sufficient to enable the Committee to carry out the directions of the Conference and have its recommendations put in the form of a bill by a Parliamentary draftsman. It was also considered premature to have such a bill drafted before it was known what the decisions of the Convention would be. The idea of the bill was therefore dropped and the publication of this supplementary report by the Committee on the points referred to it by the Lucknow Conference was considered more desirable.

The question of the date of the Convention was reconsidered at the meeting of the Committee held at Delhi on the 5th November. It was agreed that the date should be fixed with due regard to the convenience of all the organisations and so far as possible before the open sessions of the Congress. The 19th December was therefore provisionally fixed and in view of a press statement issued by Mr. Jinnah that the Convention should follow the annual sessions of the various organisations a sub-committee consisting of the Chairman, Dr. Ansari and Maulana Abulkalam Azad was appointed to confer with Mr. Jinnah and to communicate with the other members of the Committee if there appeared "grave reasons for not holding the Convention before the Congress." The sub-committee accordingly met Mr. Jinnah at Lucknow but unfortunately no agreement could be reached. Mr. Jinnah was in favour of holding the Convention after the annual sessions of the various organisations for the reason that it would only then be possible for the representatives of the Muslim League to attend the Convention with full authority to take a responsible part in its deliberations. This opinion was not shared by many members of the Council of the League which was meeting at the time as it was thought that the Council itself could give the requisite authority but Mr. Jinnah adhered to his view. The reason given did not apply to other organisations whose executives, with the exception, perhaps, of one or two, had duly elected their representatives to attend the Lucknow Conference where important decisions were arrived at. This they did in compliance with an appeal made by Dr. Ansari to send duly elected representatives to the Convention.

We were of opinion that any authority given to representatives could not obviate the necessity of formal ratification by the parent institutions and that the result of holding the Conven-



tion after the annual sessions of the various organisations would be to leave the decisions of the Convention unconfirmed for a whole year which was highly undesirable. The Committee therefore decided to meet the objection of Mr. Jinnah by so arranging the dates of the Convention as to enable the Muslim League to appoint duly authorised representatives at its annual sessions and at the same time to afford the fullest opportunity to all organisations to consider the decisions of the Convention at their annual sessions and pronounce their final opinions on them. The 26th, 27th and 28th December were fixed by the Council of the Muslim League at Lucknow for the annual sessions of the League. The Convention will open on the 22nd December which will probably be taken up with the inaugural speech of the President and other formal proceedings. The next two days will be given to more or less non-controversial matters. It is expected that in the course of these discussions occasion will arise for informal consultations between the various parties and meetings of any committees which may be appointed by the Convention to report to it on matters arising out of the discussions. There will therefore be no session of the open Convention on the 25th and 26th December and the various parties will be at liberty either to hold their separate meetings or joint conferences with other parties on those days. The Subjects Committee of the Indian National Congress will also meet on the 25th and the 26th to discuss the resolutions to be brought up before the Congress. The Convention will meet again on the 27th and will continue its sittings on the 28th and if necessary also on the morning of the 29th to discuss the communal and such other questions as may be reserved at the previous session. The Muslim League will have ample opportunity on the 26th and the 27th to authorise or instruct its representatives who will be able to attend the final sessions of the Convention with the necessary authority to deal with the communal and any other questions which they may like to raise. The Congress will meet on the 29th, 30th and 31st December with all the materials necessary to enable it to give its final verdict. This arrangement ought to meet the wishes of all parties. We have given the matter our most anxious consideration and have come to the conclusion that the course adopted is in the circumstances most desirable as it makes it possible and convenient to all organisations to be properly represented at the Convention and also gives them the opportunity of considering the decisions of the Convention in their full sessions.

We desire to take this opportunity to record our sense of gratefulness to the numerous bodies and associations which have passed resolutions expressing their approval of the scheme outlined by us. The general appreciation of our humble effort has been very encouraging to us and we treat it as a clear indication

of the strength of will of the nation to be satisfied with nothing less than full responsible government.

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## CHAPTER II

### AMENDMENTS OF THE RECOMMENDATIONS

#### *(A) The Communal Aspect*

1. The most important question which engaged the attention of the original Committee and was discussed at length in the main Report was the question of reservation of seats for Muslim majorities in the Punjab and Bengal. It is gratifying to note that the recommendations of the Report were accepted by the Hindus and Muslims of the Punjab at the Lucknow Conference and the clauses relating to Bengal were formally accepted on behalf of Bengal Muslims and Hindus by Messrs. Akram Khan and J. M. Sen Gupta. The Punjab agreement is embodied in resolution No. 6 of the Lucknow Conference set out at p. 164 of the 3rd edition of the Report. All that is necessary for us is to add a proviso to Clause III (a) (p. 123). The proviso will run as follows :—

“Provided that the question of communal representation will be open for reconsideration if so desired by any community after working the recommended system for 10 years.”

It is a matter of great satisfaction that the Punjab and Bengal Provincial Muslim Leagues as well as the Punjab Provincial Khilafat Committee have at their open sessions fully accepted this agreement. The question of reservation of seats for Muslim majorities must therefore be taken as finally settled, the Muslims of the only two provinces concerned having accepted the Lucknow agreement. We are aware that the seceders from the old Muslim League in the Punjab and certain sections of Muslims in the minority provinces are still dissatisfied with the Punjab Hindu Muslim agreement. As against the former we have the fact that numerous public meetings held in almost all the important towns of the Punjab and attended by thousands of Muslims have passed resolutions approving the recommendations and that not a single public meeting has been called to support the point of view of the seceders. We should have been glad to notice some of the points they have tried to make against our recommendations if we were only sure that they themselves believed in those points. When we find these gentlemen approaching the Statutory Commission with the most reactionary proposals insisting on communal electorates, no transfer of power to the popular repre-

sentatives in the Central legislature and continuation of law and order as a reserved subject in the Provinces we may be excused if we refuse to treat them seriously when they take us to task for not recommending proportional representation, a complete federal system of Government from top to bottom, and full provincial autonomy. As regards Muslims in Provinces other than the Punjab and Bengal, we are of opinion that they are entirely out of court as they are not in the least personally affected and have not been briefed by their brethren of the Punjab and Bengal who, as pointed out above, have accepted our recommendations. Bengal Muslims generally must be taken to have accepted the resolution of the Provincial League approving the Lucknow decisions as no other Muslim meetings have been held in that province either for or against that resolution. We therefore submit that the controversy about reservation of seats for majorities must now be taken as closed.

2. The connected question of reservation of seats for minorities was considered by us at our meeting held at Delhi on the 5th November and in compliance with the general Muslim desire expressed in the press and at various meetings we have added the following proviso to clause IV.

"Provided that the question will be open for reconsideration after the expiration of that period if so desired by any community."

A great grievance has been made by certain sections of the Muslims against the main Report for not allowing the continuance of the weightage at present enjoyed by the community in provinces where it is in a minority. The reasons for that recommendation are fully set out at pages 51 to 53 of the main Report. We desire to point here that the Madras Congress resolution which is accepted by most of these critics allows no weightage to minorities except as a result of reciprocal concessions by mutual agreement. No question of such concessions arises on our recommendations as we have not allowed any weightage to Hindu or any other minorities. Under the Madras resolution the Muslim minorities would be not only not entitled to claim any weightage but would be precluded from contesting additional seats beyond those warranted by their strict proportion to the population. So far from depriving them of any advantages they would have had under that resolution we have actually given them a valuable additional right which on reconsideration we hope they will appreciate.

3. The question of the separation of Sind from the Bombay Presidency has been settled by mutual agreement which was adopted by the Lucknow Conference in resolution No. 4 vide page 162. It is one of the tragedies of communal controversy that the two bitterest opponents of the Lucknow agreement

Maulana Shaukat Ali and Maulvi Shafi Daudi are the signatories to the Sind agreement and have not yet explained how they came to sign it if as they now say it puts "Islam in danger."

We therefore unhesitatingly recommend that the Lucknow resolution be substituted for Clause V of the main Report vide page 124.

4. The word "Baluchistan" was by an oversight omitted from Clause VII (p. 124). By resolution 12 of the Lucknow Conference (p. 166) this omission was rectified and the clause will now read as follows :—

"The N. W. F. Province, Baluchistan and all newly formed provinces by separation from other provinces, shall have the same form of government as the other provinces in India."

5. The question of language was referred by the Lucknow Conference to us for report (resolution No. 9 p. 165). We have adopted the suggestions of the Conference and recommend that Clause 4 (v) of the original recommendations (p. 102) dealing with fundamental rights be amended by the addition of the following proviso :—

"Provided that adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities of considerable strength in the population through the medium of their own language and in such script as is in vogue among them."

Explanation—This provision will not prevent the State from making the teaching of the language of the Commonwealth obligatory in the said schools."

In accordance with the same resolution of the Lucknow Conference we also recommend that the following new clause be added to the original recommendations after clause 4 under the new heading "Language" (p. 103) :—

4 A. (i) The language of the Commonwealth shall be Hindustani which may be written either in Nagri or in Urdu character. The use of the English language shall be permitted.

(ii) In provinces the principal language of a province shall be the official language of that province. The use of Hindustani and English shall be permitted."

6. The last question having a communal aspect referred to us was the amendment of clause 87 (p. 123). We were directed to amend that clause "so as to safeguard the interests and rights of the various minorities in the central legislature with regard to the amendment of the constitution." (Resolution 7, p. 165). A sub-committee consisting of Mr. Chagla, Sir T. B. Sapru and Pandit Hriday Nath Kunzru went into the question and reported that the needs of the situation would be met by substituting the

words "4/5ths of those present" for the words "2/3rds of the total number of members." We entirely agree and recommend that the said amendment be made.

It will be seen from the above that we have gone a very long way to meet the Muslim demand. The only point upon which we are sorry we cannot see eye to eye with them is the question of reservation for them of 1/3rd of the total number of seats in the Central legislature. This point has been fully dealt with in the main Report (p. 53 last paragraph and p. 54). We have not heard anything since to induce us to alter our opinion. On the contrary we are convinced that the fears of the Muslims are more imaginary than real. We may point out that our recommendations in this respect are more favourable to Muslims than the Madras Resolution which provides that the proportion agreed upon for the provinces shall be maintained in the Central Legislature. We have fixed no proportions for the Punjab and Bengal. With the unfettered rights we have recommended for Muslims in those provinces to contest any number of seats they like, the chances are that they will capture more seats for the Central legislature than they are entitled to in strict proportion to their population.

We dealt with the last District Board elections in Bengal at p. 47 and 48 of the main Report and gave interesting figures relating to it in Appendix C. (p. 154). The figures for the Punjab were not then available to us but we anticipated similar results in that province also. We are now in possession of full particulars and find that our expectation was justified. The figures now available are given in Appendix "A" to this report. They will appear at a glance to be even more illuminating than those of Bengal. In spite of the fact that the non-Muslim voters for the Punjab District Boards number about 3,02,000 and the Muslim voters about 2,68,000 only Muslims have captured 408 seats out of a total of 815 which is just over 50 per cent. In 15 out of 28 districts the Muslim members exceed Hindus and Sikhs combined. While there are 9 districts where no Sikhs have been elected and 4 where no Hindu has been elected there is only one district where the Muslims failed to capture a single seat. In two districts all the elected members are Muslims.

As we have shown in the main Report any attempt at the reservation demanded will upset the whole of our scheme. We are therefore strongly opposed to it. We appeal to the Muslims in the minority provinces to accept our recommendations in a generous spirit. The question does not arise in Bengal and the Punjab.

We cannot close this chapter without expressing our deep regret at the attitude taken by the Sikhs on the main Report and the Lucknow resolutions. Their case is fully considered in

that Report at pages 56 and 57 and we have again given our most anxious consideration to it. The complaint so far as we can understand it is against reservation of seats for Muslim minorities for a fixed period. The Sikhs do not stand to gain if this reservation is removed but have chosen to champion the cause of true nationalism and democracy by insisting on total abolition of reservation from every part of the country. We have not claimed that our recommendations can be justified by abstract principles. Indeed no constitution in the world can be supported by a strict application of those principles. All we claim is to have suggested a constitution which in all the circumstances of our country appeared to us to be just and reasonable. We regret we cannot remove the temporary reservation we have proposed on practical considerations simply to vindicate the highest principles of democracy.

There is one matter, however, in which the Sikhs have our entire sympathy and that is their proposal to introduce proportional representation in the Punjab. Our colleague Sardar Mangal Singh is strongly in favour of this system—we have discussed the question at length in the main Report (pp 35 to 37.) where we have expressed our own approval of the principle but have refrained from recommending it on practical grounds. We shall be glad if a way out of those practical difficulties is found by the Convention.





## CHAPTER III

### AMENDMENTS OF THE RECOMMENDATIONS

#### *B. General*

We shall now deal with matters other than communal. Some of the amendments to the original recommendations have been made by the Lucknow Conference and suggestions for other amendments have been referred to us. We shall first take the former.

1. *Cl. 3 Definition of Citizen.*—In accordance with resolution No. 8 of the Lucknow Conference we have amended cl. 3 of the original recommendations by adding a fresh sub-clause as follows:—“who being a subject of an Indian State ordinarily carries on business or resides in the territories of the Commonwealth.”

At the time of writing this report our attention was called to the criticism of sub-clauses (a) and (b) of the original clause (3) that those sub-clauses exclude British subjects coming from the United Kingdom or the Dominions from acquiring rights of citizenship, while subjects of foreign countries naturalised in the Commonwealth of India are given that privilege. This criticism appears to us to be well-founded. The matter however was not discussed at any of the meetings of the Committee and we must therefore leave it to the Convention to consider the advisability of adding another sub-clause as follows: “or who being a subject of the Crown carries on business or resides in the territories of the Commonwealth.” If these amendments are carried out the sub-clauses will have to be re-arranged and clause (3) will read as printed in chapter IV.

2. We have carried out the amendment to clause 4 (ii) as decided by the Lucknow Conference by adding the words “all titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed.”

3. *Sub-Clause 4 (xvii)*—In accordance with resolution 11 we have added to this sub-clause the words “and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants.”

4. By resolution 13 the Lucknow Conference directed us to take schedules I and II of the Report into consideration and make such alterations therein as may appear necessary. This

direction was given in view of certain amendments proposed by Chowdhari Afzal Haq. Our colleague Maulana Abdul Kadir Kasuri informed us that the object of the amendments proposed by Chowdhari Afzal-ul Haq was to make it clear that legislation for the control of the subjects mentioned in items 28, 29 (a), 29 (b), 37 (a) (b) (c) and 38 of schedule I properly falls within that schedule but that the actual administration of those subjects must be left to the provincial governments. We have therefore added the words "Laws relating to the" before the word "control" in items 28, 29 (a) and 29 (b), and the same words before the word "welfare" in item 37 (a), before the word "provident" in item 37 (b), and before the word "industrial" in item 37 (c).

These were all the amendments which our colleague Maulana Abdul Kadir Kasuri considered necessary to schedule I and we have adopted his suggestion. No amendment of schedule II was proposed either at the Lucknow Conference or suggested to us at our meetings.

We now turn to the amendments upon which there is no resolution of the Lucknow Conference and fall within the matters referred to us for consideration and report.

5. We propose the following new clause to be added immediately after clause 13 and to number it as clause 13A:—

(a) "In cases of grave emergency and in matters of serious controversy between provinces or a province and an Indian State, the Central Government and Parliament shall have all the powers necessary, and ancillary, including the power to suspend, and annul the Acts, executive and legislative, of a provincial government.

(b) The Supreme Court shall have no jurisdiction in cases where the Commonwealth Government or Parliament has acted in exercise of the powers under the preceding sub-clause."

The necessity for the clause will be quite evident. We find something similar to it in almost every written constitution. The clause no doubt confers extraordinary powers but no Central Government can be carried on without those powers. What is important for the safety and security of the people is that such powers should be under the control of Parliament and not merely in the hands of the Executive Government. We have taken care to establish such control.

6. Under clause 29 of the original recommendations the Governor of every province was to be appointed by the King. This has been the subject of some controversy. We are agreed that the appointment of a Governor should be made by the Governor-General-in-Council and therefore recommend that in clause 29 for the words "by the King and represent His

Majesty in the Province " the words " by the Governor-General-in-Council " be substituted. There was some discussion at our meeting as to whether the power should rest with the Governor-General or Governor-General-in-Council. The majority favoured the latter view.

7. Having regard to the amendment made in clause 29, clause 30 would now read as follows : " The salaries of Governors shall be fixed and provided by Parliament and until so provided shall be as in schedule.....

8. Clause 57 of the original recommendations provided for the removal of the Chief Justice and the other Judges of the High Court by the Governor-General-in-Council on an address by the Provincial Legislature. It was the general opinion at the Lucknow Conference that the powers should be exercised by the Governor-General-in-Council on an address from both Houses of Parliament. Apart from the fact that members of the Provincial Legislature cannot be expected to be entirely uninfluenced by local controversies difficulties will arise if there is one High Court for two or more provinces. We therefore recommend that for the words "by the Provincial Legislature" the following words be substituted : "from both the Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity."

9. It is not necessary to explain verbal amendments which we have recommended in certain clauses. For the convenience of the Convention all the recommendations made in chapter VII of the main Report are reprinted in the Appendix to this report and the amendments now recommended appear in italics.

These are all the amendments that we feel called upon to recommend.

We have considered resolution 14 of the Lucknow Conference which runs as follows :—

" This Conference declares that the agreements contained in the foregoing resolutions and decisions are based upon the assumption that the general scheme sketched out in the Nehru Report adopted by this Conference shall be given effect to as a whole in as much as the various provisions thereof are interdependent upon each other, and all the parties assembled in this Conference hereby agree that every one of them will stand by it as a whole and will refuse to accept any single part of it without giving full force and effect to all other parts.

Provided that any modification of this scheme may be accepted by the consent and agreement of all the parties.

This resolution embodies a most important agreement between the parties but we are of opinion that there is no place for it in

the constitution itself. It is useful and operative only during the period preceeding the passing and adoption of the constitution and forms no part of it. We think it will serve its purpose if the resolution is confirmed by the Convention.

Our colleague, Mr. Shuaib Qureshi resigned from the Committee on his departure for Europe.

MOTILAL NEHRU  
TEJ BAHADUR SUPRU  
S. ALI IMAM  
MADAN MOHAN MALAVIYA  
ANNIE BESANT  
M. A. ANSARI  
M. R. JAYAKAR  
ABUL KALAM AZAD  
MANGAL SINGH  
M. S. ANEY  
SUBHAS CHANDRA BOSE  
VIJIARAGHAVACHARIAR  
ABDUL KADIR KASURI

## APPENDIX

### THE RECOMMENDATIONS

(as amended)

#### *Constitutional Status of India*

1. India shall have the same constitutional status in the *community*\* of nations, known as the British Empire, as the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa and the Irish Free State, with a Parliament having powers to make laws for the peace, order and good government of India, and an executive responsible to that Parliament; and shall be styled and known as the Commonwealth of India.

#### *Operation of the constitution and laws*

2. This Act and all laws made by the Parliament of the Commonwealth thereunder shall be binding on the courts and people of every province, and of every part of the Commonwealth, notwithstanding anything in the laws of the Indian Legislature or of any province or in any Act of the United Kingdom extending to British India; and the laws of the Commonwealth shall be enforced in all Indian territorial waters.

#### *Definition of citizen*

3. The word "citizen" wherever it occurs in this constitution means every person

- (a) who was born, or whose father was either born or naturalised, within the territorial limits of the Commonwealth and has not been naturalised as a citizen of any other country;
- (b) †*who being a subject of an Indian State ordinarily carries on business or resides in the territories of the Commonwealth;*
- (c) ‡*or who, being a subject of the Crown carries on business or resides in the territories of the Commonwealth;*
- (d) who is naturalised in the Commonwealth under the law in force for the time being.

Explanation.—No person who is a citizen of a foreign country can be a citizen of the Commonwealth unless he renounces the

\* The word in the Report was "comity."

† This clause was added by the Lucknow conference.

‡ This clause has been recommended by the enlarged committee to be added by convention.

**Citizenship** of such foreign country in the manner prescribed by law.

### *Fundamental Rights*

4. (i) All powers of government and all authority, legislative, executive and judicial, are derived from the people and the same shall be exercised in the Commonwealth of India through the organisations established by or under, and in *\*due process* of this constitution.

(ii) No person shall be deprived of his liberty, nor shall his dwelling or property be entered, sequestered or confiscated, save in accordance with law. † *All titles to private and personal property lawfully acquired and enjoyed at the establishment of the Commonwealth are hereby guaranteed.*

(iii) Freedom of conscience and the free profession and practice of religion are, subject to public order or morality, hereby guaranteed to every person.

(iv) The right of free expression of opinion, as well as the right to assemble peaceably and without arms, and to form associations or unions, is hereby guaranteed for purposes not opposed to public order or morality.

(v) All citizens in the Commonwealth of India have the right to free elementary education without any distinction of caste or creed in the matter of admission into any educational institutions, maintained or aided by the state, and such right shall be enforceable as soon as due arrangements shall have been made by competent authority. ‡ *Provided that adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities of considerable strength in the population through the medium of their own language and in such script as is in vogue among them.*

*Explanation.—This provision will not prevent the State from making the teaching of the language of the Commonwealth obligatory in the said schools.*

(vi) All citizens are equal before the law and possess equal civic rights.

(vii) There shall be no penal law whether substantive or procedural of a discriminative nature.

(viii) No person shall be punished for any act which was not punishable under the law at the time it was committed.

(ix) No corporal punishment or other punishment involving

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\* The words in the report were "accord with"

† Added by the Lucknow Conference.

‡ This provision was added by the enlarged committee in compliance with resolution 9 of the Lucknow conference.

torture of any kind shall be lawful.

(x) Every citizen shall have the right to a writ of *habeas corpus*. Such right may be suspended in case of war or rebellion by an Act of the central legislature, or, if the legislature is not in session, by the Governor-General-in-Council, and in such case he shall report the suspension to the legislature, at the earliest possible opportunity for such action as it may deem fit.

(xi) There shall be no state religion for the Commonwealth of India or for any province in the Commonwealth, nor shall the state either directly or indirectly endow any religion or give any preference or impose any disability on account of religious belief or religious status.

(xii) No person attending any school receiving state aid or other public money shall be compelled to attend the religious instruction that may be given in the school.

(xiii) No person shall by reason of his religion, caste or creed be prejudiced in any way in regard to public employment, office of power or honour and the exercise of any trade or calling.

(xiv) All citizens have an equal right of access to, and use of, public roads, public wells and all other places of public resort.

(xv) Freedom of combination and association for the maintenance and improvement of labour and economic conditions is guaranteed to everyone and of all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

(xvi) No breach of contract of service or abetment thereof shall be made a criminal offence.

(xvii) Parliament shall make suitable laws for the maintenance of health and fitness for work of all citizens, securing of a living wage for every worker, the protection of motherhood, welfare of children, and the economic consequences of old age, infirmity and unemployment *\*and Parliament shall also make laws to ensure fair rent and fixity and permanence of tenure to agricultural tenants.*

(xviii) Every citizen shall have the right to keep and bear arms in accordance with regulations made in that behalf.

(xix) Men and women shall have equal rights as citizens.

*Note :* Notwithstanding anything to the contrary in article (iv) the Sikhs are entitled to carry kirpans.

### *Language*

4 A.† (i) *The language of the Commonwealth shall be Hindustani which may be written either in Nagri or in Urdu character. The use of the English language shall be permitted.*

\* This clause was added by the Lucknow conference.

† This section has been added by the enlarged committee on the recommendation of the Lucknow conference.

(ii) *In provinces, the principal language of a province shall be the official language of that province. The use of Hindustani and English shall be permitted.*

### *Parliament*

5. The legislative power of the Commonwealth shall be vested in a Parliament which shall consist of the King, a Senate and a House of Representatives herein called the Parliament.

6. The Governor-General shall be appointed by the King and shall have, and may exercise in the Commonwealth, during the King's pleasure, but subject to this constitution, such powers and functions of the King as His Majesty may assign to him.

7. (a) There shall be payable to the King out of the revenues of India for the salary of the Governor-General an annual sum.....which, until the Parliament of the Commonwealth otherwise provides, shall be as in the schedule hereof provided.

(b) The salary of a Governor-General shall not be altered during his continuance in office.

8. The Senate shall consist of 200 members to be elected by the Provincial Councils, a specific number of seats being allotted to each province on the basis of population, subject to a minimum. The election shall be held by the method of proportional representation with the single transferable vote. (The Hare system).

9. The House of Representatives shall consist of 500 members to be elected by constituencies determined by law. Every person of either sex who has attained the age of 21, and is not disqualified by law, shall be entitled to vote.

Provided that Parliament shall have the power to increase the number of members from time to time if necessary.

10. (1) Every House of Representatives shall continue for five years from its first meeting and every Senate shall continue for seven years.

Provided that—

(a) either chamber of the legislature may be sooner dissolved by the Governor-General; and

(b) any such period may be extended by the Governor-General if in special circumstances he so thinks fit; and

(c) after the dissolution of either chamber the Governor-General shall appoint a date not more than six months after the date of dissolution for the next session of that chamber.

(2) *\*A session of the Parliament shall be held at least .*

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\* This clause has been added by the enlarged committee.



once a year.

(3) The Governor-General may appoint such times and places for holding the sessions of either chamber of the Indian Legislature as he thinks fit, and may also from time to time, by notification or otherwise, prorogue such sessions.

(4) Any meeting of either chamber of the Indian Legislature may be adjourned by the person presiding.

(5) All questions in either chamber shall be determined by a majority of votes of members present, other than the presiding member who shall, however, have and exercise a casting vote in the case of an equality of votes.

(6) The powers of either chamber of the Indian Legislature may be exercised notwithstanding any vacancy in the chamber.

11. There shall be a president of each House of Parliament who shall be a member of the House and shall be elected by the House. There shall also be a deputy president of each House who shall also be a member of the House and be similarly elected.

12. The privileges, immunities and powers to be held, enjoyed and exercised by the Senate and by the House of Representatives and by the members thereof respectively shall be such as are from time to time defined by Act of Parliament of the Commonwealth.

13. Parliament shall, subject to *\*and under* the provisions of this Constitution, have power to make laws.

- (a) for the peace, order and good government of the Commonwealth in relation to all matters not coming in the classes of subjects by this Act assigned to the legislatures of provinces ;
- (b) for the nationals and servants of the Commonwealth within other parts of India as well as those without and beyond India ;
- (c) for the government officers, soldiers airmen and followers in His Majesty's Indian forces, wherever they are serving, in so far as they are not subject to the Army Act or the Air Force Act, and
- (d) for all persons employed or serving in or belonging to the Royal Indian Marine Service or the Indian Navy.

For greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that notwithstanding anything in this Act the legislative authority of the Parliament of the Commonwealth extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule I attached hereto.

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\* These words were added by the enlarged committee.

13. A \*(a). *In cases of great emergency and in matters of controversies between provinces or a province and an Indian State the Central Government and the Parliament have all the powers necessary and ancillary including the power to suspend or annul the acts, executive and legislative, of a Provincial Government.*

(b). *The Supreme Court shall have no jurisdiction in cases where the Commonwealth Government or Parliament has acted in exercise of the powers under the preceding sub-clause.*

14. The powers of Parliament with respect to foreign affairs, not including the Indian States, shall be the same as exercised by the self-governing dominions.

15. Provision may be made by rules under this Act for regulating the course of business and the preservation of order in the chambers of the Indian Legislature, and as to the persons to preside at the meetings of the House of Representatives in the absence of the president and the deputy president; and the rules may provide for the number of members required to constitute a quorum, and for prohibiting or regulating the asking of questions on, and the discussion of, any subject specified in the rules.

16. (i) Any bill which appropriates revenue or monies for ordinary annual services of the Commonwealth government shall deal only with such appropriations.

(ii) Bills imposing taxation shall deal only with the imposition of taxes, and any provision therein dealing with any other matter shall be of no effect.

(iii) Bills affecting the public debt or for the appropriation of revenues or monies or for imposing taxation shall be introduced only by a member of the executive council and can only originate in the House of Representatives.

17. A money bill means a bill which contains only provisions dealing with all or any of the following subjects, namely the imposition, repeal, remission, alteration or regulation of taxation; the imposition, for the payment of debt or other financial purposes, of charges on public revenues or monies, or the variation or repeal of any such charges; the supply, appropriation, receipt, custody, issue or audit of accounts of public money; the raising of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them. In this definition the expression "taxation," "public money" and "loan" respectively do not include any taxation, money or loan raised by local authorities or bodies for local purposes.

18. The question whether a bill is or is not a money bill will be decided by the president of the House of Representatives.

19. A money bill passed by the House of Representatives

\* This section was added by the enlarged committee.

shall be sent to the Senate for its recommendations and it shall be returned not later than.....days therefrom to the House of Representatives, which may pass it, accepting or rejecting all or any of the recommendations of the Senate; and the bill so passed shall be deemed to have been passed by both chambers.

20. (i) Subject to the provisions of this Act, a bill may be initiated in either House of Parliament and, if passed by the originating House, shall be introduced in the other House for being passed.

(ii) Except as otherwise provided under this Act, a bill shall not be deemed to have been passed by Parliament unless it has been agreed to by both Houses, either without amendments or with such amendments only as may be agreed to by both Houses.

(iii) If any bill which has been passed by the House of Representatives is not, within six months after the passage of the bill by that House, passed by the Senate, either without amendments or with such amendments as may be agreed to by both Houses, the Governor-General shall, on resolution passed by either House to that effect, refer the matter for decision to a joint sitting of both Houses. The members present at any such joint sitting may deliberate and shall vote together upon the bill as last proposed by the House of Representatives and upon amendments, if any, which have been made therein by one House of Parliament and not agreed to by the other; and any such amendments which are affirmed by a majority of the total number of members of the Senate and the House of Representatives present at such sitting, shall be taken to have been duly passed by both Houses of Parliament.

21. (i) So soon as any bill shall have been passed, or deemed to have been passed by both Houses, it shall be presented to the Governor-General for the signification by him, in the King's name, of the King's assent, and the Governor-General may signify such assent or withhold the same or he may reserve the bill for the signification of the King's pleasure.

(ii) A bill passed by both Houses of Parliament shall not become an Act until the Governor-General signifies his assent thereto in the King's name, or in the case of a bill reserved for the signification of the King's pleasure, until he signifies by speech or message to each House of Parliament, or by proclamation that it has received the assent of the King in Council.

Provided that the Governor-General may, where a bill has been passed by both Houses of Parliament and presented to him for the signification by him of the King's assent, or has been reserved by him for the signification of the King's pleasure, return the bill for reconsideration by Parliament with a recommendation that Parliament shall consider amendments thereto.

(iii) Any bill so returned shall be further considered by Parliament together with the amendments, recommended by the Governor-General, and if re-affirmed with or without amendments, may be again presented to the Governor-General for the signature in the King's name of the King's assent.

### *The Commonwealth Executive*

22. The executive power of the Commonwealth is vested in the King and is exercisable by the Governor-General as the King's representative, acting on the advice of the Executive Council subject to the provisions of this Act and of the laws of the Commonwealth.

23. (a) There shall be an Executive Council consisting of the Prime Minister and, until Parliament otherwise provides, not more than six ministers of the Commonwealth.

(b) The Prime Minister shall be appointed by the Governor-General and the ministers shall also be appointed by him on the advice of the Prime Minister.

(c) The Executive Council shall be collectively responsible to the *\*House of Representatives* for all matters concerning the department of the Commonwealth administered by members of the Executive Council *†and generally for all advice tendered by it to the Governor-General.*

24. Until Parliament otherwise provides, the appointment and removal of all other officers of the executive government of the Commonwealth shall be vested in the Governor-General-in-Council, unless the appointment is delegated by the Governor-General-in-Council, or by a law of the Commonwealth, to some other authority.

25. The Command-in-chief of the military, naval and air forces of the Commonwealth is vested in the Governor-General as the King's representative.

### *High Commissioner and Foreign Representatives*

26. The Commonwealth shall have the power to appoint High Commissioners and other foreign representatives similar to that exercised by Canada and other dominions. Such appointments shall be made by the Governor-General in Council who shall also make provision by rules for their pay, powers and duties, and the conditions of employment.

### *Financial control*

27. (1) The Auditor-General in India shall be appointed by the Governor-General-in-Council who shall by rules make provision for his pay, powers and duties, and the conditions of employment, and for the discharge of his duties in the case of

\*The word in the Report was "Legislature."

†These words have been added by the enlarged committee.

a temporary vacancy or absence from duty.

(2) Subject to any rules made by the Governor-General-in-Council, no office may be added to or withdrawn from the public service and the emoluments of no posts may be varied except after consultation with such finance authority as may be designated in the rules, being an authority of the province or of the Commonwealth according as it is or is not under the control of a local government.

### *The Provincial Legislature*

28. The legislative power of a province shall be vested in the King and the local Legislative Council.

29. There shall be a Governor of every province who shall be appointed by the *\*Governor-General-in-Council*.

30. †*The salaries of the Governors shall be fixed and provided by Parliament, and until so provided, shall be as in schedule:...*

31. (i) There shall be one member of the Provincial Legislative Council for every 100,000 of the population of the said province, provided that in provinces with a population of less than ten millions there may be a maximum of 100 members.

(ii) Every member shall be elected by a constituency determined by law. Every person of either sex who has attained the age of 21 and is not disqualified by law shall be entitled to vote.

32. (i) Every Provincial Council shall continue for 5 years from its first sitting provided that—

(a) it may be sooner dissolved by the Governor;

(b) the term of 5 years may be extended by the Governor if in special circumstances he so thinks fit;

(c) after the dissolution of the Council the Governor shall appoint a date not more than 6 months after the date of the dissolution, for the next session of the Council.

(ii) The Governor may appoint such times and places for holding the sessions of the Council as he thinks fit and may also from time to time, by notification or otherwise, prorogue such sessions.

(iii) Any meeting of the Council may be adjourned by the person presiding.

(iv) All questions in the Council shall be determined by

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\*The words in the Report were "King and represent His Majesty in the Province."

†The original clause was "There shall be payable to the King out of revenues of the province for the salary of the Governor an annual sum of ..... which, until Parliament of the Commonwealth otherwise provides, shall be as in Schedule....hereof provided."

the majority of votes of the members present, other than the presiding member, who shall however have and exercise a casting vote in the case of an equality of votes.

(v) The powers of the Council may be exercised notwithstanding any vacancy.

(vi) *\*A session of the Council is held at least once a year.*

33. There shall be a president of every Council who shall be a member of the House and shall be elected by the House. There shall also be a deputy president who shall also be a member of the House and be similarly elected.

34. The local legislature of any province has power, subject to the provisions of this Act, to make laws for the peace and good government of the territories for the time being constituting that province. The legislative authority of every provincial council extends to all matters coming within the classes of subjects hereinafter enumerated and specified in Schedule II, attached hereto.

35. The local legislature of any province may repeal or alter, as to that province, any law relating to a provincial subject made before the commencement of this Act by any authority in British India.

36. Any measure affecting the public revenues of a province, or imposing any charge on the revenue, shall be introduced only by a member of the executive council of the Governor.

37. When a bill has been passed by a local Legislative Council, the Governor may declare that he assents to or withholds his assent from the bill.

38. If the Governor withholds his assent from any such bill, the bill shall not become an Act.

39. If the Governor assents to any such bill, he shall forthwith send an authentic copy of the Act to the Governor-General, and the Act shall not have validity until the Governor-General has assented thereto and that assent has been signified by the Governor-General to, and published by the Governor.

40. Where the Governor-General withholds his assent from any such Act, he shall signify to the Governor in writing his reason for so withholding his assent.

41. When an Act has been assented to by the Governor-General it shall be lawful for His Majesty in Council to signify his disallowance of the Act.

42. Where the disallowance of an Act has been so signified,

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\* This has been added by the enlarged committee.

† Word "either" has been omitted by the enlarged committee.

the Governor shall forthwith notify the disallowance, and thereupon the Act, as from the date of the notification shall become void accordingly.

### *The Provincial Executive*

43. The executive power of the province shall be vested in the Governor acting on the advice of the provincial Executive Council.

44. There shall be an Executive Council for every province consisting of not more than five ministers appointed by the Governor.

45. In appointing the executive council the Governor shall select the Chief Minister and appoint others only on his advice.

### *The Judiciary*

46. There shall be a Supreme Court which shall exercise such jurisdiction as Parliament shall determine. The Supreme Court shall consist of a Lord President, and as many other Justices, as Parliament may fix.

47. The Lord President of the Commonwealth and all other Judges of the Supreme Court of the Commonwealth to be appointed after the establishment of the Commonwealth shall be appointed by the Governor-General-in-Council, and shall receive such remuneration as Parliament shall prescribe, and their remuneration shall not be \* *altered* during their continuance in office.

48. The Lord President of the Commonwealth and other judges of the Supreme Court of the Commonwealth shall not be removed from office except by the Governor-General-in-Council on an address from both Houses of Parliament in the same session praying for such removal on the ground of misbehaviour or incapacity.

49. The Supreme Court shall have original jurisdiction in all matters—

- (i) referred to the Supreme Court by the Governor-General-in-Council under section 85 ;
- (ii) in which the Commonwealth, or person suing or being sued on behalf of the Commonwealth, is a party ;
- (iii) affecting consuls or other representatives of other countries ;
- (iv) between provinces ;
- (v) arising under this Constitution or involving its interpretation.

50. The Supreme Court shall have jurisdiction, with such

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\* The word in the Report was "diminished."

exceptions and subject to such regulations as Parliament prescribes, to hear and determine appeals from all judgments, decrees, orders and sentences—

- (a) of any Justice or Justices exercising the original jurisdiction of the Supreme Court ;
- (b) of the high court, \*or of any other court from which at the establishment of the Commonwealth an appeal lies to the King in Council.

51. The judgment of the Supreme Court in all such cases shall be final and conclusive and shall not be reviewed, or be capable of being reviewed by any other court, tribunal or authority whatsoever.

### *Appeals to the King in Council*

52. (i) No appeal shall be permitted to the King in Council from a decision of the Supreme Court upon any question howsoever arising, as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any province or provinces, or as to the limits *inter se* of the constitutional powers of any two or more provinces, unless the Supreme Court shall certify that the question is one which ought to be determined by the King in Council.

(ii) The Supreme Court may so certify if satisfied that for any special reason the certificates should be granted, and thereafter an appeal shall lie to the King in Council on the question without further leave.

(iii) Parliament may make laws limiting the matters in which such leave may be asked, provided that such laws do not impair any right which the King may be pleased to exercise by virtue of his royal prerogative to grant special leave of appeal from the Supreme Court to the King in Council.

### *High Courts—Constitution*

53. The high courts referred to in this Act are the high courts of judicature for the time being established in British India.

54. Each high court shall consist of a chief justice and as many other judges as the Governor-General-in-Council may think fit to appoint. Provided as follows :

- (i) The Governor-General-in-Council may appoint persons to act as additional judges of any high court, for such period, not exceeding two years, as may be required ; and the judges so appointed shall, while so acting, have all the powers of a judge of the high court appointed by the Governor-General-in-Council;

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\* The words " of any province " have been omitted by the enlarged committee.



- (ii) the maximum number of judges of a high court including the chief justice and additional judges shall be 20.

55. A judge of a high court must be an advocate on the rolls of a high court of not less than ten years' standing, provided that nothing herein contained shall affect the continuance of the tenure of office of the judges who may be holding appointments at the commencement of this Act.

56. (i) Every judge of a high court shall hold office during his good behaviour.

(ii) Any such judge may resign his office to the local government.

57. The chief justice and other judges of the high court shall not be removed from office except by the Governor-General-in-Council on an address\* *from both the Houses of Parliament in the same session, praying for such removal on the ground of misbehaviour or incapacity.*

58. (i) The Governor-General-in-Council may fix the salaries, allowances, furloughs and retiring pensions, and may alter them, but any such alteration shall not affect the salary of any judge appointed before the date thereof.

(ii) The remuneration fixed for a judge under this section shall commence upon his taking upon himself the execution of his office.

59. (i) On the occurrence of a vacancy in the office of chief justice of a high court, and during any absence of such a chief justice, the local government shall appoint one of the other judges of the same high court to perform the duties of chief justice of the court, until some person has been appointed by the Governor-General to the office of chief justice of the court, and has entered on the discharge of his duties of that office, or until the chief justice has returned from his absence, as the case requires.

(ii) On the occurrence of a vacancy in the office of any other judge of a high court, and during any absence of any such judge, or on the appointment of any such judge to act as chief justice, the local government may appoint a person with such qualifications as are required in persons to be appointed to the high court; and the person so appointed may sit and perform the duties of a judge of the court, until some person has been appointed by the Governor-General in Council to the office of judge of the court and has entered on the discharge of the duties of the office, or until the absent judge has returned from his absence, or until the local government sees cause to cancel the appointment of the acting judge.

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\* The words in the Report were "by the provincial legislature."

## *Jurisdiction*

60. (i) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those courts respectively at the commencement of this Act.

(ii) The letters patent establishing, or vesting jurisdiction, power, or authority, in a high court may be amended from time to time by a further letters patent.

61. Each of the high courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say—

- (a) call for returns ;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction ;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts ;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts ; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts ;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the local government.

62. (i) Each high court may, by its own rules, provide as it thinks fit for the exercise, by one or more judges of the high court, of the original and appellate jurisdiction vested in the court.

(ii) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief judge, are to constitute the several division courts.

63. The Governor-General in Council may, by order, transfer any territory or place from the jurisdiction of one to the jurisdiction of any other of the high courts, and authorise any high court to exercise all or any portion of its jurisdiction in any part of British India not included within the limits for which the high court was established, and also to exercise any such jurisdiction in respect of any British subject for the time being within any part of India outside the Commonwealth.

64. (a) The Governor-General, each Governor, each of the members of the Executive Council, whether in the Commonwealth or in the provinces, shall not be subject to the original, appellate or revisional jurisdiction of any high court, by reason of anything counselled, ordered or done by any of them, in his public capacity only.

(b) The exemption shall extend also to the chief justices and other judges of the several high courts.

65. The Governor-General-in-Council may, if he sees fit, by letters patent, establish a high court of judicature in any territory in the Commonwealth, whether or not included within the limits of the local jurisdiction of another high court, and confer on any high court so established, any such jurisdiction, powers and authority as are vested in, or may be conferred on, any high court existing at the commencement of this Act; and, where a high court is so established in any area included within the limits of the local jurisdiction of another high court, the Governor-General may, by letters patent, alter those limits, and make such incidental, consequential and supplemental provisions as may appear to be necessary by reason of the alteration.

#### *Advocate General*

66. The local government may appoint an advocate general for each of the provinces and may, on the occurrence of a vacancy in the office of advocate general, or during any absence or deputation of an advocate general, appoint a person to act as advocate general; and the person so appointed may exercise the powers of an advocate general until some person has been appointed by the Governor-General-in-Council and has entered on the discharge of his duties or until the advocate general has returned from his absence or deputation, as the case may be, or until the local government cancels the local appointment.

#### *Property, Revenue and Finance*

67. All property vested in, or arising or accruing from property or rights vested in, His Majesty or the Secretary of State in Council under the Government of India Acts, 1858, 1915 and 1919 shall vest in the Governor-General-in-Council.

68. The revenues of India shall vest in the Governor-General-in-Council and shall, subject to the provisions of this Act, be applied for the purposes of the Commonwealth alone.

69. The expression "the revenues of India" in this Act shall include all the territorial and other revenues of or arising in British India, and in particular,—

(i) all tributes and other payments in respect of any territories which would have been receivable by or in the name of the East India Company if the Government of

before Parliament for such legislative or other action as it may deem fit.

74. Pending the completion of the said enquiry, and until Parliament has taken action under clause 68, the existing sources of revenue and the financial relations shall continue to be in force.

#### *Defence*

75. (a) The Governor-General-in-Council shall appoint a Committee of Defence consisting of (1) the Prime Minister, (2) the Minister of Defence, (3) the Minister of Foreign Affairs, (4) the Commander-in-Chief, (5) the Commander of the Air Forces, (6) the Commander of the Naval Forces, (7) the Chief of the General Staff, and two other experts.

(b) The Prime Minister shall be the chairman of the committee ; and there shall be a permanent staff including a secretary attached to this committee.

(c) The functions of this committee shall be to advise the government and the various departments concerned with questions of defence and upon general questions of policy.

(d) As soon as the committee is appointed the Governor-General-in-Council may take the advice of the Committee of Defence as to the practicability and means of effecting a retrenchment in the expenditure on defence compatibly with the safety of India. The estimates shall be framed according to the recommendations of the committee.

76. The proposals of the Governor-General-in-Council for the appropriation of revenues or monies classified as "Defence", shall be submitted to the vote of the House of Representatives.

77. Notwithstanding anything to the contrary in the foregoing provisions, the Governor-General-in-Council may, in the event of any foreign aggression on India by land, air or sea, or upon his being satisfied that there is a reasonable apprehension of such aggression, authorise such expenditure as may be necessary for the safety of British India or any part thereof. Such action taken by the Governor-General shall be reported by him immediately to the Legislature, if in session, or if the Legislature is not in session, to a special session to be summoned as soon as possible thereafter.

78. No measure affecting the discipline or maintenance of any part of the military, naval and air forces of the Commonwealth, shall be introduced in Parliament except on the recommendation of the Committee of Defence appointed under this constitution.

#### *The Civil Services*

79. Subject to the provisions of the next succeeding section, all officers of the public services shall, at the establishment of the Commonwealth, become officers of the Commonwealth.

80. As soon as possible after the establishment of the Commonwealth, the Governor-General-in-Council shall appoint a Public Service Commission to make recommendations for such re-organisation and re-adjustment of the departments of the public services as may be necessary.

81. Parliament may make laws for regulating the classification of the civil services in India, the sources and methods of their recruitment, the conditions of service, pay and allowances, and discipline and conduct. Parliament may also, to such extent and in respect of such matters as it may prescribe, delegate the power of making rules under the said laws to the Governor-General-in-Council or to local governments.

82. (i) After the establishment of the Commonwealth the Governor-General-in-Council shall appoint a Permanent Public Service Commission with such powers and duties relating to the recruitment, appointment, discipline, retirement and superannuation of public officers as Parliament shall determine.

(ii) Members of the permanent Public Service Commission shall hold office for five years from the date of appointment.

83. Any officer of the public services who desires to retire within three years of the establishment of the Commonwealth, or is not retained in the service of the Commonwealth, shall be entitled to receive such pension, gratuity or other compensation as he would have received in like circumstances if the Commonwealth had not been established.

### *The Army Services*

84. All officers, British and Indian, serving in the army, the navy, the Royal Indian Marine, or the Air Force of India, serving in India at the commencement of the new constitution, shall retain all their existing rights as to salaries, allowances or pensions or shall receive such compensation for the loss of any of them, as the Governor-General-in-Council may consider just and equitable, or as they would have received in like circumstances if the Commonwealth had not been established.

Further all such officers, British or Indian, who were in receipt of pensions at the date of the commencement of the new constitution, shall continue to receive the same pension from the revenues of India.

### *Indian States*

85. The Commonwealth shall exercise the same rights in relation to, and discharge the same obligations towards, the Indian States, arising out of treaties or otherwise, as the Government of India has hitherto exercised and discharged.

In case of any difference between the Commonwealth and any

Indian State on any matter arising out of treaties, engagements, sanads or *\*any* other documents, the Governor-General-in-Council may, with the consent of the State concerned, refer the said matter to the Supreme Court for its decision.

### *New Provinces*

86. The re-distribution of provinces should take place on a linguistic basis on the demand of the majority of the population of the area concerned, subject to financial and administrative considerations.

### *Amendment of the Constitution*

87. Parliament may, by law, repeal or alter any of the provisions of the constitution. Provided that the bill embodying such repeal or alteration shall be passed by both Houses of Parliament sitting together and at the third reading shall be agreed to by not less than *†four-fifths of those present*. A bill so passed at such a joint sitting shall be taken to have been duly passed by both Houses of Parliament.

*Note* :—The following are the recommendations on communal and other controversial matters.

### *Communal representation*

I. There shall be joint mixed electorates throughout India for the House of Representatives and the provincial legislatures.

II. There shall be no reservation of seats for the House of Representatives except for Muslims in provinces where they are in a minority and non-Muslims in the N.-W. F. Province. Such reservation will be in strict proportion to the Muslim population in every province where they are in a minority and in proportion to the non-Muslim population in N.-W. F. Province. The Muslims or non-Muslims where reservation is allowed to them shall have the right to contest additional seats.

III. In the provinces

(a) there shall be no reservation of seats for any community in the Punjab and Bengal *†provided that the question of communal representation will be open for reconsideration if so desired by any community after working the recommended system for 10 years.*

(b) in provinces other than the Punjab and Bengal there will be reservation of seats for Muslim minorities on population basis with the right to contest additional seats ;

(c) in the N.-W. F. Province there shall be similar reservation of seats for non-Muslims with the right to contest other seats.

\* The enlarged committee has substituted "any" for "similar."

† The words in the Report, were "two-thirds of the total member of the members of both Houses."

‡ This was added by the Lucknow Conference.

IV. Reservation of seats, where allowed, shall be for a fixed period of ten years. *\*Provided that the question will be open for reconsideration after the expiration of that period if so desired by any community.*

*Redistribution and status of provinces*

V. †*Simultaneously with the establishment of Government under this constitution Sind shall be separated from Bombay and constituted into a separate province.*

*Provided*

(1) *after an enquiry it is found*

(a) *that Sind is financially self-supporting, or*

(b) *in the event of its being found that it is not financially self-supporting, on the scheme of separation being laid before the people of Sind with its financial and administrative aspects, the majority of the inhabitants favour the scheme and express their readiness to bear the financial responsibility of the new arrangement;*

(2) *that the form of Government in Sind shall be the same as in the other provinces under the constitution;*

(3) *that the non-Muslim minority in Sind shall be given the same privileges in the matter of representation in the Provincial and Central Legislatures as the Muslim minorities are given under this constitution in areas where they are in a minority.*

VI. ‡*The N.-W. F. Province, Baluchistan, and all newly formed provinces by separation from other provinces, shall have the same form of government as the other provinces in India.*

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*\* This has been added by the enlarged committee.*

*† This has been substituted by the Lucknow Conference for the following:—  
“Sind should be separated from Bombay and constituted into a separate province after such enquiry about the financial position as may be considered necessary.”*

*‡ Original clause VI about Karnataka has been omitted as a provision about the same has been made in clause VI of section 72, and clause VII has been remembered as clause VI.*

*§ This was added by the Lucknow Conference.*

## SCHEDULE I

### CENTRAL SUBJECTS

1. Trade and commerce with other countries and in India and the incorporation of trading, financial or foreign corporations in India.
2. Taxation, excluding the taxation assigned under this constitution to the provinces or parts of them; but including customs, revenue, excise, income-tax, super-tax, corporation profits tax, opium, including control of its cultivation, manufacture, and sale, export duties.
3. Bounties on the production or export of goods.
4. Borrowing money on the credit, the assets and the property of the Commonwealth; the public debt or the Government of the Commonwealth.
5. Currency, coinage and legal tender.
6. Banking and insurance and savings banks; the incorporation of banks and the issue of paper money and stock exchanges.
7. Bills of exchange, cheques, *hundies* and promissory notes.
8. Shipping and navigation, including shipping and navigation on such inland waterways as may be declared to be of national importance; harbours, major ports, lighthouses, beacons, lightships, buoys.
9. Railways, and roads of all India and military importance.
10. Aircraft and all matters connected therewith.
11. Posts, telegraphs and telephones including wireless communications and installations.
12. The defence of India and all matters connected with the naval, military and air forces of the Commonwealth, including militia, Indian Marine Service and any other force raised in India other than military and armed police wholly maintained by the provincial government; naval and military works and cantonments; schools and colleges for military, naval and air training.
13. Foreign and external relations including relations with States in India and political charges; domicile, naturalisation and aliens; passports; and pilgrimages beyond India.
14. Emigration and Immigration,
15. Port quarantine and marine hospitals.
16. The Commonwealth Public Services and the Commonwealth Public Service Commission.
17. The Audit department of the Commonwealth.
18. The Supreme Court of India, and legislation relating to High Courts.
19. Civil Law including laws regarding status, contract, property, civil rights and liabilities and civil procedure.



20. Criminal Law including criminal procedure and extradition  
aws.
21. Bankruptcy and insolvency,
22. Legislation regarding marriage, divorce and matrimonial  
matters, parental rights, the custody and guardianship of infants; their  
status and age of majority.
23. Copyright; newspaper and books; patents of inventions and  
designs and trade marks.
24. Land acquisition by or for the purposes of the Government  
of the Commonwealth.
25. Laws relating to registration of deeds and documents.
26. Laws relating to registration of births, deaths and marriages.
27. Census and statistics.
28. *Laws relating to the Control of arms and ammunition.*
29. (a) *Laws relating to the Control of petroleum and explosives.*  
(b) *Laws relating to the Control of poisons.*
30. The standards of weights and measures.
31. Fisheries in Indian waters beyond the three miles limit.
32. Survey of India; geological survey and astronomical and  
meteorological observations.
33. Parliamentary elections.
34. The seat of the Government of the Commonwealth.
35. Inter-provincial matters.
36. Factory legislation,
37. Industrial matters:  
(a) *Laws relating to the Welfare of labour.*  
(b) *Laws relating to the Provident fund.*  
(c) *Laws relating to Industrial Insurance—General health  
and accident.*
38. *Laws relating to Control of mines.*
39. Medical qualifications and standards.
40. Stores and stationery for the Commonwealth.
41. Central publicity and intelligence department.
42. Zoological survey; botanical survey; archæology.
43. Central agencies and institutions for research (including  
observatories) and for professional and technical training or promotion  
of special studies.
44. Territorial changes, other than intra-provincial, and declaration  
of laws in connection therewith.
45. All property of the Commonwealth.
46. Legislation regarding forests.
47. Legislation relating to non-judicial stamps.

The words in Italics have been added by the committee.

## SCHEDULE II

### PROVINCIAL SUBJECTS

1. Land revenue including assigned land revenue; any other tax that may be imposed on land or agricultural income; charges for water; survey and settlement; disposal and colonisation of public land and management of government estates.

2. Excise, that is to say, the control of manufacture, transport, possession, purchase and sale of alcoholic liquor and intoxicating drugs (except opium), and the levying of excise duties and license fees on, or in relation to, such articles and other restrictive excises.

3. All local taxation, such as tolls; cesses on land or land values; tax on buildings; tax on vehicles or boats; tax on animals; octroi and a terminal tax on goods imported into or exported from a local area; tax on trades, professions and callings; tax on private markets; tax on advertisements; tax on amusements or entertainments; tax on gambling: taxes imposed in return for services rendered by the local authority.

4. Land acquisition by and within the province.

5. Administration of forests and preservation of game.

6. Agriculture, including research institutes, experimental and demonstration farms, protection against destruction by insects and pests.

7. Fisheries, excluding Commonwealth fisheries.

8. Water supplies, irrigation canals, drainage and embankment, water storage and water power except where they involve a matter of inter-provincial concern or affect the relations of a province with an Indian State or any other territory.

9. Public works and undertakings within the province including buildings, roads, bridges, ferries, tunnels, ropeways, causeways, tramways, light and feeder railways, inland waterways and other means of communications except:

(a) such railways, roads and inland waterways as are central subjects.

(b) all such works as extend beyond the borders of the province.

(c) such works (although wholly situate within the province) as may be declared by Parliament to be of all India importance.

10. Co-operative societies.

11. Development of mineral resources.

12. Famine relief.

13. Pilgrimages within India.

14. Local self-government including constitution and powers of Municipal Corporations, Local Boards; Village Panchayats Improvement Trusts, Town Planning Boards and other local authorities in the province, and local fund audit.

15. Medical administration including hospitals, dispensaries, asylums, and provision for medical education.

16. Public health and sanitation and vital statistics.

17. Education, including universities and technical institutes, provincial institutions for professional or technical training and for promotion of technical studies.

18. Court of Wards and encumbered and attached estates.

19. Land improvement and agricultural loans.

20. Land tenures and landlord and tenant, rent law.

21. Administrator-General and Official Trustees subject to legislation by central legislature.

22. Development of industries, including industrial research.

23. Police, including military and armed police maintained by the province and Railway Police, subject in the case of Railway Police to such rules as may be prescribed by Parliament as to limits of jurisdiction and railway contribution to cost of maintenance.

24. Adulteration of foodstuffs and other articles.

25. (a) Control of vehicles, subject in the case of motor vehicles to legislation by the central legislature as regards licenses valid throughout India,

(b) Control of dramatic performances and cinematographs.

26. Prisons, prisoners and reformatories and vagrancy.

27. Backward tribes and their settlements.

28. Treasure trove.

29. Administration of justice in the province including the constitution, maintenance and organisation of courts of civil and criminal jurisdiction.

30. Election for the legislature of the province.

31. Legislation imposing punishments by fine, penalty or imprisonment for breach of any law of the province in relation to any provincial matter.

32. The borrowing of money on the sole credit of the province, subject to sanction of central government; assets and property of the province.

33. Administration of the law relating to the registration of births, deaths and marriages.

34. Provincial law reports.

35. Minor ports.

36. Public libraries, except the Imperial Library at Calcutta; museums, except the Indian Museum, the Imperial War Museum and the Victoria Memorial in Calcutta; zoological and botanical gardens and registration of societies.

37. Pounds and prevention of cattle trespass.
38. Civil Veterinary Department, including provisions for veterinary training, improvement of stock and prevention of animal diseases.
39. Factories, subject to legislation by central legislature.
40. Settlement of labour disputes.
41. Gas and electricity.
42. Boilers.
43. Smoke nuisances.
44. Housing of labour.
45. Coroners.
46. Provincial stores and stationery.
47. Provincial government press.
48. Provincial services and Provincial Services Commission.
49. The seat of the provincial government.
50. Control of elections subject to regulation by central government.
51. Fees, including court fees ; probate duties ; succession or estate duties.
52. Control of production, supply and distribution, subject to rules made by the central legislature.
53. Development of industries, subject to rules made by the central legislature.
54. Religious and charitable endowments, subject to legislation by central legislature.
55. Regulation of betting and gambling, subject to legislation by the central legislature.
56. Prevention of cruelty to animals and protection of wild birds and animals, subject to legislation by the central legislature.
57. Non-judicial stamps, subject to legislation by the central legislature ; and judicial stamps, subject to legislation by the central legislature as regards amount of court-fees levied in relation to suits and proceedings in the high courts under their original jurisdiction.
58. Registration of deeds and documents, subject to legislation by the central legislature.
59. Weights and measures, subject to legislation by the central legislature as regards standards.
60. Control of poisons ; arms and ammunition : petroleum and explosives, subject to legislation by the central legislature.
61. Control of newspapers, subject to legislation by the central legislature.
62. Regulation of medical and other professional qualifications and standards, subject to legislation by the central legislature.
63. Local Fund Audit.